CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800

M E M O R A N D U M

FROM: Jonna D. Engel, Ph.D.
Ecologist

TO: Mark Delaplaine
Manager, Energy, Ocean Resources and Federal Consistency Division

SUBJECT: TCA Toll Road, Pacific pocket mouse, *Perognathus longimembris pacificus* , and Pacific pocket mouse habitat

DATE: January 30, 2008

In a memorandum dated September 26, 2007, I made the determination that occupied, as well as suitable Pacific pocket mouse (PPM) habitat is environmentally sensitive or ESHA as defined by Coastal Act section 30107.5:

> *"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*

In addition, I determined that the siting and design of TCA's preferred alternative for its proposed toll road, which bisects two (San Mateo North and San Mateo South) of the four known extant PPM populations, would adversely impact PPM ESHA.

This recommendation was based on the rarity of the Pacific pocket mouse and its vulnerability to disturbance. Rarity of the Pacific pocket mouse, *Perognathus longimembris pacificus,* is well documented and uncontested. It is, in fact, one of the most endangered animals in the United States. It was listed as federally endangered by the United States Fish and Wildlife Service (USFWS) on September 29, 1994 following the discovery of a single population at Dana Point Headlands. Only three additional populations have been discovered. These are all on Camp Pendleton Marine Corps Base. PPM is listed as "Critically Endangered" on the red list of worldwide endangered species, which means that the International Union for Conservation of Nature and Natural Resource's has concluded that it is "facing an extremely high risk of extinction in the wild in the near future" (ICUN 2007). It is equally evident that PPM habitat is easily disturbed or degraded by human activities since its current precarious status is largely an effect of habitat loss due to development. For these reasons, PPM habitat meets the definition of ESHA under the Coastal Act. Suitable habitat in the proximity of these

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known populations meets the definition of ESHA, regardless of whether it has been demonstrated that the mouse is currently occupying the habitat. This is particularly important for this species, which is notoriously difficult to trap.

Historical and recent work has led to an understanding of a number of factors critical to determining the suitability of PPM habitat. Researchers concur that soil type is the most important factor driving the presence or absence of PPM. The vast majority of PPM captures have occurred in areas with relatively loose, uncompacted, fine, loamy, and fine loamy sandy soils (Spencer 2008, 2005, Spencer et al. 2000, Brylski 1993). In addition, vegetation type is an important factor affecting the presence or absence of PPM. The primary plant community at the four extant PPM populations is coastal sage scrub interspersed with native and non-native grasslands. PPM are also found in open grassland and ruderal areas (Spencer 2008). A number of other factors such as slope and disturbance may play a role in determining the presence or absence of PPM.

My September memorandum contains details about the historical and contemporary status of PPM and PPM habitat that contributed to my PPM ESHA determination. I did not review TCA's Pacific pocket mouse resource management plan because I had not received a copy. However, at the time of my September memorandum I did have, and thoroughly reviewed, the USFWS's recovery plan for the Pacific pocket mouse (Brylski et al. 1998). In my September memorandum I concluded that:

> *The Pacific Pocket Mouse Resource Management Plan referenced in this mitigation measure (measure TE-24* [within SOCTIIP EIS/SEIR]*) has yet to be developed and submitted to Commission staff for review, therefore, an adequate assessment of this plan's ability to benefit the species is not possible. Furthermore, the USFWS has already gone to great lengths to study, design, and present a Pacific pocket mouse recovery plan (Brylski et al. 1998). A significant component of this plan is to protect all remaining Pacific pocket mouse populations; that means not allowing temporary or permanent construction impacts in "areas within or proximal to known sites occupied by the Pacific pocket mouse.." (Brylski et al. 1998). The recovery plan calls for the protection of any potential Pacific pocket mouse habitat in the vicinity of the four extant populations because that habitat is the most likely to provide future habitat as the population expands as a result of protection.*
>
> *The toll road project is simply inconsistent with the recovery strategy laid out for the Pacific Pocket Mouse in the recovery plan (Brylski et al. 1998). Construction of the toll road is directly counter to all recovery criteria for the species and would therefore preclude its recovery. Recovery of the San Mateo North population requires increasing individual numbers and area of occupancy allowing for population expansions and dispersal and for maintaining the full extent of genetic diversity. Building the toll road runs completely counter to these goals. The toll road will reduce the size of the occupied area, prevent natural range expansions, impede dispersal, and contribute to loss of genetic diversity. These changes will all increase the likelihood of population extirpation.*

TCA's Pacific Pocket Mouse Resource Management Plan

The "Pacific Pocket Mouse Resource Management Plan for the San Mateo North Population" (Ramey and Johnston 2007) includes eight exhibits that summarize the San Mateo North habitat attributes and much of the plan. Exhibit 1, "Pacific Pocket Mouse Management Area" displays the "Pacific Pocket Mouse Action Area" which consists of 161 acres and includes the occupied San Mateo North population area and suitable PPM habitat around the footprint of the proposed toll road including the section within the coastal zone, the "Management Area" that consists of 71.81 acres west of the proposed toll road, the boundaries of the "Historical Agricultural Area", the TCA proposed toll road alignment, and the estimated disturbance limits of the TCA proposed toll road. Exhibit 1 also identifies the locations of successful trapping events from 1995/1996, 1999, 2001, and 2003. Ramey and Johnston (2007) report that:

> *The 1995/1996 trapping efforts for FTC-South identified one population of the PPM on a small hillside north of the intersection of Interstate 5 (i-5) and Cristianitos Road. This population is referred to as San Mateo North. This subspecies was subsequently live-trapped in the San Mateo North area in 1999, 2001, and 2003. Nearly 60,000 trap nights were set in the 1995 and 1996 timeframe and 33 and 22 mice were captured, respectively in those years. In 1999, 6,400 trap nights were set with two individuals captured. In 2001, and additional 3,400 trap nights were set at the occupied habitat location and in contiguous areas and three individuals were captured. In 2003, 2,500 trap nights were set and four animals were captured (Exhibit 2). No additional trapping efforts have been conducted on the San Mateo North site since 2003.*

These data clearly reveal that when more effort is made, more mice are captured. In 1995/1996 an order of magnitude more effort was expended (60,000 trap nights) than in 1999, 2001, and 2003 (6,400, 3,400, and 2,500 traps nights, respectively) and an order of magnitude more mice were trapped (33 and 22, respectively; compared to 2, 3, and 4, respectively). In addition, the most mice were captured where the most traps were placed. Exhibit 2, "Pacific Pocket Mouse Management Area, Traplines and Capture Locations", identifies the locations of the traplines set during each trapping season. By far, the greatest concentration of capture locations occurred on the small hillside north of the coastal zone where the greatest concentration of traplines were placed. These facts are pertinent to Murphy's (2008) criticism "*that the Pacific pocket mouse has not actually been detected in the coastal zone portion of the proposed project area despite over 65,000 trap nights*." Murphy neglects to point out that hardly any trapping effort has occurred in the coastal zone portion of suitable PPM habitat. In fact, the trapping that has occurred in the vicinity of the San Mateo North population was conducted by a variety of different groups and scientists for a variety of different reasons, using a variety of different methods. A major omission of Murphy, Ramey, and the TCA PPM resource management plan is that they fail to acknowledge that the various trapping programs were not necessarily designed to document the geographic extent of PPM presence. In fact, some of the trapping was specifically concentrated in areas of known PPM

occurrence to assure captures for genetic work (pers. comm. Dr. Wayne Spencer, Jan. 28, 2008). Neither Murphy, Ramey, nor TCA's PPM resource management plan provide essential information for interpreting the PPM capture data; we do not know the dates traplines and traps were set, the duration of traps in the field, the number of traps set during each trapping session, the associated environmental conditions during trapping events, etc. Furthermore, the demonstration of PPM presence within the coastal zone is not a critical issue here since both occupied and suitable PPM habitat is ESHA under the Coastal Act.

Ramey (December 7, 2007) asserts that "PPM are distinctly absent from former agricultural areas. To date, there has been no documented permanent PPM occupancy of former agricultural areas (Ramey and Johnston 2007, Service 2007, Ogden 1997)." There is no compelling evidence for this claim. In fact, there has been no formal attempt to document "permanent PPM occupancy" or "permanent PPM absence" from former agricultural areas. However, in spite of the fact that very little trapping effort has occurred in former agricultural areas, at least 30% of the trapped mice in the San Mateo North population were caught in or immediately adjacent to former agricultural areas. Exhibits 1 and 8 (Ramey and Johnston 2007) show that a minimum of four, and potentially 17, of the 56 captures occurred on former agricultural areas[1]. Spencer[2] (Spencer 2005, Ogden 1997) hypothesized that areas disturbed by agriculture may be avoided by PPM, however he notes (Spencer 2008) that an untested hypothesis is not a sufficient basis for ruling out PPM occupancy in agricultural fields, especially since some early captures were reported to be in "weedy fields" that may have been used for agriculture. Although agricultural fields may be suboptimal habitat, PPM may still be present.

Ramey and Johnston (2007) describe the vegetation within the PPM action area as follows: "includes open space areas currently supporting coastal sage scrub, chaparral, and annual grassland species (Exhibit 3)." The management area consists of about equal parts "mixed sage scrub" and "sagebrush - coyote bush sage scrub". The majority of PPM captures occurred in mixed sage scrub habitat. Mixed sage scrub consists of approximately equal percentages of typical coastal sage scrub species such as sagebrush, buckwheat, coyote bush, and white sage whereas sagebrush - coyote bush sage scrub is a plant community dominated by sagebrush and coyote bush (pers. comm. Ann Johnston, Jan. 28, 2008). The color pattern of Exhibit 3 (vegetation mapping) suggests that these habitats are very different when in fact they are quite similar. In addition to soils, the presence of sagebrush interspersed with open areas is believed to be an important habitat characteristic for PPM. Both mixed sage scrub and

[1] The uncertainty is due to the scale in which the data are presented. The location of captures are marked by large triangles; the actual GIS location of the traps are not provided and so it is impossible to say whether the traps were in or out of former agricultural areas.

[2] Dr. Wayne Spencer of the Conservation Biology Institute is one of the foremost authorities on the Pacific pocket mouse and CCC staff have given substantial weight to his written work. Interestingly, Ramey (2007) denigrates the authority of Dr. Spencer by characterizing him as "an activist writing in the capacity of a project opponent" when criticizing CCC staff, but nevertheless cites Spencer in support of his own arguments (e.g., Ramey 2007 p: 9, Ramey and Johnston 2007 pp. 3, 14, 33, 34).

sagebrush – coyote bush sage scrub are plant community types capable of supporting PPM.

As noted above, soils are considered the most important physical factor driving the presence/absence of PPM (Spencer 2008, 2005, Bornyasz 2003, Spencer et al. 2000). PPM are known to inhabit sandy, loamy soils. Soils with a high clay percentage are not favored by PPM. The TCA PPM resource management plan states that "Five soil types were identified in the vicinity of the Management Area. These soil types are all "very friable" at the surface, and contain considerable amounts of sand." Exhibit 4 depicts the percentage of clay within the soils in the management area. All the soils in the management area fall into low clay categories: 0 to 5% and 5 to 10%. All of the trapped mice were collected in sandy soils with from 0 to 10% clay. The entire coastal zone area shown in Exhibit 4 falls within this category as well as the vast majority of the management area.

Both the soils and the vegetation throughout the management area are suitable for supporting PPM. The management area includes the coastal zone area west of the proposed toll road. The habitat (soils, vegetation, slope) south of occupied PPM habitat within the coastal zone both west and east of Cristianitos Road and north of I-5, is very similar to the occupied habitat. Ramey and Johnston (2007) attribute the lack of PPM captures within the coastal zone area to low quality habitat (e.g. former agricultural areas, sagebrush – coyote bush sage scrub). However, it is just as likely that the lack of PPM captures in this area is simply a reflection of the lack of trapping effort.

Ramey (December 7, 2007) discusses the fact that much of the potential PPM habitat in the vicinity of the toll road is sloped and he asserts that PPM are not found on steep slopes. However, the notion that steep slopes preclude the presence of PPM is contradicted by Exhibit 5. While the greatest percentage of space within the management area is characterized by < 30% slopes, the area where PPM captures have occurred includes both slopes >18% and slopes >30%. Spencer (2008) points out that 10% of San Mateo North captures were on slopes >30%. To put this in perspective, less than 10% of the trapping effort has been on such steep slopes. These data falsify the hypothesis that PPM avoid steep slopes. It follows that sloped areas with suitable soil and vegetation characteristics near the toll road are potential PPM habitat.

Culverts have been proposed to provide opportunities for the dispersal of PPM. However, the rationale underlying the placement of the four proposed culvert locations depicted on Exhibit 6 is not presented. The proposed placement of culverts is puzzling because none of them are close to capture locations. In fact, the culverts are sited about as far away as possible from capture locations. One is in the extreme south of the PPM management area and three others are in the extreme north or outside of the management area. The southern-most culvert leads to a patch of vegetation that will be completely isolated between I-5, Cristianitos Road, and the proposed toll road. The first northward culvert leads directly into the existing campground, the next two lead directly into an isolated path of vegetation, outside the management area, that hasn't been

mapped for soils or vegetation, is surrounded by a road, and adjacent to a bare area that appears to have been recently burned or formerly developed.

Ramey (December 7, 2007, Ramey and Johnston 2007) repeatedly contends that PPM "must compete with more abundant and aggressive species, including the western harvest mouse, which is larger but overlaps with PPM in body size and food habits (primarily seeds), making it PPM's closest competitor." This is pure speculation. There have been no studies of competition involving the Pacific pocket mouse. Ramey goes on to say that natural selection would lead to the exclusion of the less abundant and aggressive species when there is competition for the same niche. Spencer (2008), however, reports that there is no empirical evidence that PPM are out-competed by WHM. Spencer (2008), on the other hand, suggests that these species partition the food resource niche because the harvest mouse eats seeds directly off plants whereas the pocket mouse forages on the ground for seeds. Ramey (December 7, 2007) presents a table (without citation) that shows WHM numbers increasing while PPM numbers are decreasing at San Mateo North. He attributes this to WHM out-competing PPM even though he does not have any empirical evidence to support this speculation. If real, the population pattern could be the result of any number of biological or physical factors. In summary, the competitive relationships between PPM and other species are not known.

Ramey and Johnston (2007) hypothesize that the San Mateo North PPM population "is small, primarily because there is little potential high quality habitat, vegetation is overgrown, other mouse species out-compete PPM, and feral cats are not controlled." However, the soil, vegetation, and slope throughout the management area are suitable for PPM occupancy. PPM populations are known to demonstrate dramatic population expansions and contractions through time. The SMN population has been studied for less than a decade and it is likely that past populations of PPM were much more abundant and that future population expansions will occur. Clearly there is room for SMN habitat improvements such as feral cat eradication, under crossings along Cristianitos Road, low-impact invasive species removal, and experimental work such as vegetation trimming. These habitat manipulations do not require realization of TCA's proposed toll road in order to be implemented.

TCA's PPM resource management plan includes numerous mitigation measures that have never been field tested to demonstrate their efficacy. Examples of these untested measures include soil augmentation, mouse barriers intended to divert mice to culvert crossings, culvert crossings, reduction of an assumed competition between PPM and other rodent species, control of invasive ants, and invasive plant removal. The truth is TCA's PPM resource management plan is largely experimental with no guarantee for success. Ramey (December 7, 2007) states that "[p]ractically speaking, the best chance for protection and management of the San Mateo North Population will be if the toll road project is approved and the *Pacific Pocket Mouse Resource Management Plan* (PPM RMP) is implemented." Similarly, Ramey concludes his December 7, 2007 letter with support for the TCA toll road saying, "Here is an opportunity for a well-funded program that will not adversely affect PPM but will enhance its chances [sic] survival

and recovery in the future." These recommendations are based on optimistic assumptions and ignore the considerable uncertainty of success. In fact, there is good reason to believe that the toll road will adversely affect PPM and that the experimental resource management plan may not work. It is important to recognize that the TCA proposal (Ramey 2007, Ramey and Johnston 2007) is a one-way street. If the toll road is built and the management plan does not work, there will be no way to reverse the impacts to the already precarious existence of the PPM.

The proposed toll road bisects two of the four existing populations that have potential for interacting during times when environmental conditions are favorable. The best plan for the San Mateo North population is to employ the USFWS adaptive management strategies presented in their PPM Recovery Plan (Bryski et al. 1998). TCA's preferred alternative for the proposed toll road is antithetical to realizing any of the goals of the USFWS PPM Recovery Plan, which consists of two components. The first is to stabilize existing populations by protecting known currently occupied habitat, searching for additional populations, and providing protection to any that are found. The second component consists of establishing new populations via natural colonization and re-colonization into adjacent areas and transplantation of captive bred individuals.

The recovery plan describes a number of criteria that will be required in order to consider reclassifying the pocket mouse to threatened status. These criteria include establishment of ten viable, independent, and stable or increasing populations with secure habitats that are free of risk of loss (presently only four populations known to exist including the two threatened by the proposed toll road); protected habitat totaling nearly 5,000 acres (currently the total existing habitat is estimated at less than 1,000 acres); programs in place to maintain Pacific pocket mouse genetic diversity; and finally that all pocket mouse populations and critical habitat are managed so that the current and potential threats (e.g. habitat fragmentation, predation, disease) are eliminated or managed to the extent that each population is not at risk of extirpation.

Unless, or until sufficient, additional viable populations are discovered and/or established and protected, it is imperative that existing populations be protected and expanded through active management. Loss or degradation of any of the extant populations at the three known San Diego locations could irreversibly diminish the likelihood of the subspecies' survival. All known extant populations are essential, including the Dana Point Headlands population (Boggs 1997, Buck 1997, Price 1997, Soule' 1996). In conclusion, occupied, as well as suitable Pacific pocket mouse (PPM) habitat is meets the definition of Environmentally Sensitive Habitat Areas under the Coastal Act and the siting and design of TCA's preferred alternative for the proposed toll road would significantly degrade those areas and disrupt their habitat values.

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Spencer, Wayne D., Senior Conservation Biologist, Conservation Biology Institute. January 17, 2008. Letter to California Coastal Commission, Attention Mark Delaplaine. Re: Impacts of Foothill Transportation Corridor – South (FTC-S) on Coastal Zone Resources.

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EXHIBIT 1
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FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

Name of project:	FTC-S/SR-241 (CC 018-07), W.8.b.
Date and time :	1/25/08 (10:15 AM)
Location of communication:	K&S Ranch
Type of communication	Personal Meeting
Person initiating communication:	Susan McCabe, Robert Thornton
Person receiving communication:	Steve Blank

This meeting consisted of:

- a review of the project location within Camp Pendleton and the coastal zone, and maps of the portion of the project within Camp Pendleton, the TCA's map of the project alignment; and a map of the portion of the project within the coastal zone.
- an overview project impacts, proposed mitigations
- why the I-5 widening project is considered infeasible by Caltrans
- A statement that TCA is offering $100 million to state parks
- Brief discussion of project financing. Citigroup to do a bond offering after TCA receives approvals

TCA then went into some detail regarding the:

- relationship of the proposed project to the existing railroad, old Pacific Coast Highway, I-5, Cristianitos Road, Trestles beach, San Mateo Campground outside the CZ, the various units of San Onofre State Beach (including the fact that the State Park is a leasehold that expires in 2021), and the existing Bluffs campground that is immediately adjacent to I-5 and the railroad.
- TCA claimed:
    - the project will not impact any Native American burial grounds
    - the project will not impact the surf break at Trestles Beach;
    - the impacts on San Mateo Campground will be mitigated;
    - Project will not impact use or enjoyment of the beach as it will be no closer to the beach than the old highway 101.
    - The project is an important component of the regional transportation plans approved by the Southern California Association of Governments, and the San Diego Association of Governments.
    - this process was transparent and open to all interested parties

Also discussed was the TCA's claim that the Commission has used the balancing provisions of the Coastal Act in the past in similar projects to concur with the Consistency Certification. These included:

- the TCA's SR-73 project in the early '90's,
- and more recently, SR-56, and North Co. Transit double-tracking.

TCA claims that the conflict with ESHA policies can be balanced by the benefits the project provides for

- water quality improvements,

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- public access to coastal resources, lower-cost visitor-serving uses and accommodations,
- provision of habitat creation (over and above mitigation requirements),

1/28/08

Date _____ Signature of Commissioner

EXHIBIT 2
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FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project, LCP, etc.: CC-0018-07 TOLL ROAD

Date and time of receipt of communication: 1/30/08

Location of communication: PHONE CALL

Type of communication (letter, facsimile, etc.) ______

Person(s) initiating communication: SUSAN McCABE

Person(s) receiving communication: STEVEN KRAM

Detailed substantive description of content of communication:
(Attach a copy of the complete text of any written material received.)

Discussion of Marines being in favor of this project or not - Proj can be in ESHA if you use ~~[illegible]~~ balancing as was done in the past with other toll roads. AG lawsuit against project?

Discussion that State Parks will not close down the camp ground - over 300' from proposed road as opposed to 200+' from 5

1/30/08
Date

[signature]
Signature of Commissioner

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication.

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FORM FOR DISCLOSURE OF EX PARTE COMMUNICATION

Date and time of communication: (For messages sent to a Commissioner by mail or facsimile or received as a telephone or other message, date time of receipt should be indicated.) — Thurs, Jan 24, 2008, 9:30 AM

Location of communication: (For communications sent by mail or facsimile, or received as a telephone or other message, indicate the means of transmission.) — San Clemente

Person(s) initiating communication: — Larry Rannals, Marine Corps Liaison Officer

Person(s) receiving communication: — Patrick Kruer

Name or description of project: — FTC-S/SR-241 (CC 018-07), W.8.b.

Detailed substantive description of content of communication:
(If communication included written material, attach a copy of the complete text of the written material.)

Without entourage, the Marine Corps representative took me on a tour of the entire alignment of proposed SR-241 through Camp Pendleton (outside the Coastal Zone). He showed me the existing operations of the base within the vicinity of the proposed alignment and explained the near-future (outside of Coastal Zone) Marine readiness training developments that were in the works. He showed me the relationship of the proposed alignment to the existing San Mateo Campground, the existing HKV transmission lines from SONGS, and existing Cristianitos Road, and the Native American reburial grounds. We visited the San Mateo Campground and questioned the Park rangers about usage.

1/28/08
Date

Signature of Commissioner

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Location of communication: (For communications sent by mail or facsimile, or received as a telephone or other message, indicate the means of transmission.) — San Clemente

Person(s) initiating communication: — Tom Margro, Dave Lowe, Donna Andrews, Ann Johnston, Rob Ramey, Supervisor Tom Campbell, Nancy Lucast (all representing TCA)

Person(s) receiving communication: — Patrick Kruer

Name or description of project: FTC-S/SR-241 (CC 018-07), W.8.b.

Detailed substantive description of content of communication:
(If communication included written material, attach a copy of the complete text of the written material.)

This meeting consisted of a review of a scale model of the proposed project, followed by a review of the project description, impacts, mitigations and benefits package as outlined in the briefing book previously provided to me and all Commissioners and staff. Specifically discussed, *inter alia*, was the TCA's concept of employing the balancing provisions of the Coastal Act in order to concur with the Consistency Certification. This briefing was followed by a private tour of the Camp Pendleton portion of the project (see separate ex parte disclosure), then by a tour with the parties named above from the State Park parking lot to Trestles beach where we regarded the relationship of the proposed project to the beach, trail and other existing developments.

1/28/08
Date

Signature of Commissioner

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

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Mark Delaplaine

From: Vanessa Miller
Sent: Tuesday, January 29, 2008 11:04 AM
To: Mark Delaplaine; Jeff Staben
Subject: FW: Ex Parte Communication

-----Original Message-----
From: Jim Bourgart [mailto:JBourgart@bth.ca.gov]
Sent: Tuesday, January 29, 2008 10:27 AM
To: Hope Schmeltzer; Vanessa Miller
Subject: Ex Parte Communication

Dear Ms Schmeltzer: On January 22, 2008, I received a phone call from Chris Walker of Nossaman, Guthner, et al., representing the Transportation Corridor Agencies. He sought to discuss the item on the February 6 Coastal Commission agenda pertaining to the consistency finding on the Foothill Transportation South project. I stated that I preferred to have no further conversation or a meeting with the advocates on this topic, and the conversation ended quickly without any substantive discussion.

Jim Bourgart
Deputy Secretary for Transportation and Infrastructure
California Business, Transportation and Housing Agency
(916) 323-5412

EXHIBIT 2
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W. 8.b.

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATION

Date and time of communication: (For messages sent to a Commissioner by mail or facsimile or received as a telephone or other message, date time of receipt should be indicated.) Wed, Jan 23, 2008, 2:00 PM

Location of communication: (For communications sent by mail or facsimile, or received as a telephone or other message, indicate the means of transmission.) Eureka

Person(s) initiating communication: Tom Margro, Supervisor Pat Bates, Councilmember Lisa Bartlett, Nancy Lucast (all representing TCA)

Person(s) receiving communication: Bonnie Neely

Name or description of project: FTC-S/SR-241 (CC 018-07), W.8.b.

Detailed substantive description of content of communication:
(If communication included written material, attach a copy of the complete text of the written material.)

This meeting consisted of:

- a review of the project description,
- the need for the congestion relief the project would provide,
- the significantly worse weekend (recreation) traffic congestion compared to weekday traffic on I-5,
- the severe spill-over effects on the local surface road system which impairs access to coastal resources,
- an overview of the route selection process, project impacts, proposed mitigations, benefits package, etc.
- guided by TCA's briefing book previously provided to me and all Commissioners and staff.

TCA then went into some detail regarding the:

- relationship of the proposed project to the existing railroad, old Pacific Coast Highway, I-5, Cristianitos Road, Trestles beach, San Mateo Campground outside the CZ, the trail between the two, the various units of San Onofre State Beach (including the fact that the State Park is a leasehold that expires in 2021), and the existing Bluffs campground that is immediately adjacent to I-5 and the railroad.
- The points were made that:
  - the project will not impact the surf break at Trestles Beach;

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W. 8.b.

- the project has been designed to be sediment neutral (the projected contribution to the sediment load, due to inclusion of state of the art design BMPs, is immeasurable);
- the project (just like the railroad, Old Pacific Coast Highway, I-5 and its Cristianitos Rd interchange, Cristianitos Rd itself, San Mateo Campground and its roads and pads, the 600 acres of ag field that operated for 50 years, El Camino Real and all the other developments in the San Mateo Creek watershed before it) will have no effect on the contribution of cobbles to the beach/reef (which only happens during extreme storm events).

Also discussed was the TCA's concept of employing the balancing provisions of the Coastal Act in order for the Commission to concur with the Consistency Certification, as has been done in other similar projects over the years, including:

- the TCA's SR-73 project in the early '90's,
- and more recently, SR-56, and North Co. Transit double-tracking.

TCA claims that the conflict with ESHA policies can be balanced by the benefits the project provides for

- water quality improvements,
- public access to coastal resources, lower-cost visitor-serving uses and accommodations,
- provision of habitat creation (over and above mitigation requirements),
- public safety and national security improvements—

All in furtherance of Coastal Act policies. TCA explained these components of the project, including its commitment to contribute, upon receipt of financing,

- $100 million to a fund to be administered by State Parks in consultation with the Department of the Navy (owner of Camp Pendleton and SOSB lessor) and for the benefit of State Parks. TCA had suggested several potential uses for these funds, including lease extensions for SOSB, funding of additional camp sites at SOSB, San Clemente State Beach, Crystal Cove State Beach, completion of "cottages" at Crystal Cove State Beach and other coastal resource protection. The selection of use of the funds would be left to State Parks and the DoN.

TCA indicated it would submit suggested conditions for Concurrence at the public hearing on Feb. 6.

1-28-08
Date

Signature of Commissioner

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FORM FOR DISCLOSURE OF EX PARTE COMMUNICATION

Date and time of communication: (For messages sent to a Commissioner by mail or facsimile or received as a telephone or other message, date time of receipt should be indicated.) January 28, 2008 – 4:19 p.m.

Location of communication: (For communications sent by mail or facsimile, or received as a telephone or other message, indicate the means of transmission.) Eureka, CA – via email

Person(s) initiating communication: Charlotte Masarik

Person(s) receiving communication: **Bonnie Neely**

Name or description of project: Del Mar Fairgrounds

Detailed substantive description of content of communication:
(If communication included written material, attach a copy of the complete test of the written material.)

(See attached email communication)

1-28-08 Bonnie Neely

Date Signature of Commissioner

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Hayes, Kathy

From: Neely, Bonnie
Sent: Monday, January 28, 2008 4:19 PM
To: Hayes, Kathy
Subject: FW: CCC Hearing - 2/6 - 241 Toll Road Extension - letter to the Commissioners

Another exparte for Coastal. We need to mail all these out tomorrow if possible.

-----Original Message-----
From: Charlotte Masarik [mailto:charlottemasarik@cox.net]
Sent: Sunday, January 27, 2008 2:54 PM
To: 'Andrew Willis'; Neely, Bonnie; 'Brian Baird'; 'Dave Potter'; 'district 5'; 'Dr Dan'; 'Dr William A Burke'; 'forelc'; 'K Schwing'; 'kachadjian'; 'm reilly'; 'M Vaughn'; 'Mary K Shallenberger'; 'P Thayer'; 'Pat Veesart'; Peter Douglas; pkruer; 'S Kinsey'; 'Sara Wan'; 'Steve Blank'; 'Steven Kram'
Subject: CCC Hearing - 2/6 - 241 Toll Road Extension - letter to the Commissioners

CCC Hearing – Del Mar Fairgrounds on Wed 6th February.

Ref: Consistency certification by Transportation Corridor Agencies of Orange County to construct Foothill Transportation South (FTC-S) toll road in southern Orange and northern San Diego County,

Dear Commissioners:

I have read the Commission Staff Report and strongly feel that you have no alternative but to support your staff in voting against approval of this certification before you on 6th February. It is strongly evident to me that the TCA is inconsistent in their proposal and that the proposed benefits have not been quantified or established in any way. The project is fundamentally inconsistent with the spirit and letter of numerous resource protection policies of the Coastal Act from the filling in of wetlands to the issues of water quality, access, ESHA and other environmentally unsubstantiated 'benefits' proposed by the TCA.

The [California Coastal] commission's staff strongly recommends against approval, saying that "building a six-lane toll road through San Onofre would cause widespread violations of state environmental laws by threatening endangered species, marring natural resources and compromising recreational opportunities." "It's difficult to imagine a more environmentally damaging alternative location," the commission's staff concluded. "No measures exist that would enable the proposed alignment to be found consistent with the California Coastal Act."

As Commissioners you know the issues well and understand the very core of The Coastal Act, and that is why I look to you to protect this park land which is a valuable resource for all Californians now and in the distant future. Please do not succumb to the pressures of development. It will be an indefensible loss if you agree to this toll road and I beg you not to authorize the certification of this project.

I thank you for all that you try to do to save and protect our beloved coast.

Sincerely, Charlotte Masarik

Charlotte Masarik
761 Oak Street
Laguna Beach, Ca 92651
949-494-1630
949-295-8040

1/28/2008

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FORM FOR DISCLOSURE OF EX PARTE COMMUNICATION

Date and time of communication:
(For messages sent to a Commissioner by mail or facsimile or received as a telephone or other message, date time of receipt should be indicated.)

January 28, 2008 – 4:17 p.m.

Location of communication:
(For communications sent by mail or facsimile, or received as a telephone or other message, indicate the means of transmission.)

Eureka, CA - via email

Person(s) initiating communication:

Lindsay Tognetti

Person(s) receiving communication:

Bonnie Neely

Name or description of project:

Del Mar Fairgrounds

Detailed substantive description of content of communication:
(If communication included written material, attach a copy of the complete test of the written material.)

(See attached email communication)

1-28-08
Date

Bonnie Neely
Signature of Commissioner

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Hayes, Kathy

From: Neely, Bonnie
Sent: Monday, January 28, 2008 4:17 PM
To: Hayes, Kathy
Subject: FW: Coastal Commission Hearing February 6, 2008

Please prepare an exparte on this. Thanks.

-----Original Message-----
From: Lindsay Tognetti [mailto:Lindsay4homes@cox.net]
Sent: Sunday, January 27, 2008 9:03 PM
To: awillis@coastal.ca.gov; Neely, Bonnie; brian.baird@resources.ca.gov; dpotter@coastal.ca.gov
Subject: Coastal Commission Hearing February 6, 2008

Attn: California Coastal Commissioners

Please read the attached letter re: your hearing on February 6, 2008

You will need to click on the Open Document screen about 3 times in sequence in order to open it. Sorry!

Lindsay Tognetti
Laguna Beach, CA

1/28/2008

EXHIBIT 2
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2nd Addendum

January 27, 2008

CCC Hearing – Del Mar Fairgrounds on Wed 6th February

RE: Consistency certification by Transportation Corridor Agencies of Orange County to construct Foothill Transportation South (FTC-S) toll road in southern Orange County and northern San Diego County

Dear Commissioners:

I have read the Commission Staff Report and strongly feel that you have no alternative but to support your staff in voting against approval of this certification before you on 6th February. It is strongly evident to me that the TCA is inconsistent in their proposal and that the proposed benefits have not been quantified or established in any way. The project is fundamentally inconsistent with the spirit and letter of numerous resource protection policies of the Coastal Act from the filling in of wetlands to the issues of water quality, access, ESHA and other environmentally unsubstantiated 'benefits' proposed by the TCA.

The California Coastal Commission's staff soundly recommends against approval, saying that "building a six-lane toll road through San Onofre would cause widespread violations of state environmental laws by threatening endangered species, marring natural resources and compromising recreational opportunities." "It's difficult to imagine a more environmentally damaging alternative location," the commission's staff concluded. "No measures exist that would enable the proposed alignment to be found consistent with the California Coastal Act."

As Commissioners you know the issues well and understand the very core of The Coastal Act, and that is why I look to you to protect this park land which is a valuable resource for all Californians now and in the distant future. Please do not succumb to the pressures of development. It will be an indefensible loss if you agree to this toll road and I beg you not to authorize the certification of this project.

I thank you for all that you try to do to save and protect our beloved coast.

Sincerely,

Lindsay Tognetti
31441 Ocean View
Laguna Beach, Ca 92651

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FORM FOR DISCLOSURE OF EX PARTE COMMUNICATION

Date and time of communication: (For messages sent to a Commissioner by mail or facsimile or received as a telephone or other message, date time of receipt should be indicated.)	January 28, 2008 – 2:30 p.m.
Location of communication: (For communications sent by mail or facsimile, or received as a telephone or other message, indicate the means of transmission.)	Eureka, CA
Person(s) initiating communication:	Susan Jordan & Ralph Faust
Person(s) receiving communication:	Bonnie Neely
Name or description of project:	Toll Road Project

Detailed substantive description of content of communication:
(If communication included written material, attach a copy of the complete text of the written material.)

Reviewed contents of document prepared by Smart Mobility, Inc. (Revised January, 2008) on behalf of Cal. State Parks Foundation.

01/30/08
Date

Signature of Commissioner

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Talking Points for call to Bonnie re: Foothill-South Toll Road

- It's very likely this toll-road project violates the Coastal Act.
- The staff report in October 2007 on this issue said "The project is fundamentally inconsistent with the spirit and letter of numerous resource protection policies of the Coastal Act."
- Specific sections being violated include:
  - Permanent Elimination of Environmentally Sensitive Habitat Areas – Coastal Act § 30240
    Destruction of Parks, Recreation, and Public Access – Coastal Act §§ 30210, 30213, 30220, 30221, 30223, 30240(b).
  - Fill of Wetlands – Coastal Act § 30233.
  - Degradation of Water Quality – Coastal Act §§ 30230, 30231
  - Damage to Cultural Resources – Coastal Act § 30244.
  - Blight to Visual and Scenic Resources – Coastal Act § 30251.

Coastal Commission History with San Onofre State Beach

- The California Coastal Commission has had an extremely important role in shaping the recreational opportunities available to the public at San Onofre State Beach.
- It was a CCC action back in 1974, when the Commission approved the original San Onofre Nuclear Generating Station (SONGS), that required the development of a campground and a trail in nearby San Onofre State Beach park– which had been dedicated as a state park in 1971.
- The Commission's goal of increasing public access and recreational opportunities at SOSB is realized when the campground was finalized in 1999. As of 2005-06, the park hosted 2.4 million visitors annually – and its most popular campground, San Mateo Campground, hosts roughly 100,000 visitors per year.

Major Impacts of Toll Road

- Fragments key portions of the largest, most ecologically intact block of natural land on California's south coast
- Directly occupies and destroys irreplaceable Environmentally Sensitive Habitat Areas for several threatened and endangered species
- Bisects entire upland portion of San Onofre State Beach - 4 miles and over 320 acres of the park
- Would likely force Department of Parks and Recreation to abandon over 1,000 acres – almost 50% of state park
- Undermines recreational and natural resource visited by 2.4 million people each year
- Decreases availability of affordable, overnight coastal access among, already-oversubscribed Southern California campgrounds
- Degrades water quality in San Mateo Creek, watershed, and surf zone
- Fragments San Mateo Archaeological National Register District
- Runs through historic Village of Panhé and impacts portions within the coastal zone
- Disturbs sacred site artifacts and relics

Bottom line, if you start allowing developers to pave over state parkland in urban Southern California, you might ultimately make it easier to pave over state parkland everywhere, even up in our area.

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CALIFORNIA COASTAL COMMISSION
FREMONT, SUITE 2000
N FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200

Th 18a+b

REVISED PROPOSED FINDINGS

ON COMBINED CONSISTENCY CERTIFICATION

AND COASTAL DEVELOPMENT PERMIT APPLICATION

7-0 approved 5/13/93

Consistency Certification No.	CC-63-92
Application No.	5-92-232
Staff:	MPD-SF
Cons. Cert. File Date:	6/30/92
Permit Applic. File Date:	10/20/92
49th Day:	Waived
180th Day:	4/18/93
3 Months:	Extended
6 Months:	12/30/93
Commission Vote:	11/18/92
Hearing on Findings	5/11-14/93

APPLICANT: **Transportation Corridor Agencies (TCA)**

DEVELOPMENT LOCATION: Between existing Route 73 in the City of Newport Beach and the connection with Interstate 5 (I-5) in San Juan Capistrano, Orange County (Exhibits 1 and 2)

DEVELOPMENT DESCRIPTION: Construction of the San Joaquin Hills Transportation Corridor (SJHTC) (also referred to as "Corridor") (Exhibits 2-10)

PREVAILING COMMISSIONERS: Commissioners Calcagno, Cervantes, Doo, Malcolm, Moulton-Patterson, Neely, Rick, and Wright

SUBSTANTIVE FILE DOCUMENTS: See Page 58

EXECUTIVE SUMMARY:

On June 30, 1992, the applicant (TCA) submitted a combined coastal development permit and consistency certification for the construction o[f] the San Joaquin Hills Transportation Corridor (SJHTC), a 17.5 mile tollway [from] State Route 73 in the City of Newport Beach and the connecti[on] 5 (I-5) in San Juan Capistrano, Orange County. Two small [p]ortions of the tollway are physically within the coastal zone: (1) appro[x.] mile in Newport Beach (the San Diego Creek bridge crossings

EXHIBIT NO. 3
APPLICATION NO.
CC-018-07
2nd ADDENDUM

restoration programs)(Exhibit 6); and (2) approximately 1/2 mile around the middle of the tollway, located on Moro Ridge in unincorporated Orange County (Irvine Coast area) (Exhibit 2). The first of these two components requires a coastal development permit. The remainder of the 17.5 mile road is outside the coastal zone; however, it is federally permitted and affects the coastal zone, triggering the need for a consistency certification.

Because most of the project and its effects will occur outside the coastal zone, the Commission is limiting its review of habitat and water quality impacts to: wetlands losses within the coastal zone, downstream sedimentation/water quality impacts, and impacts on particularly sensitive habitat resources, such as rare, especially valuable, threatened or endangered species, where the geographic scope of the project's habitat impacts clearly extends into the coastal zone. Three critical issues are: (1) the question of whether the San Diego Creek crossing (within the coastal zone in Newport Beach) is consistent with the public access and wetland policies of the Coastal Act; (2) the impacts on the California gnatcatcher, a species proposed for listing as an endangered species; and (3) water quality monitoring issues.

Regarding the first of these issues, the project implements the public access policies of the Coastal Act, but is inconsistent with the uses identified as allowable for wetland fill purposes under Section 30233. However, the Coastal Act also contains a conflict resolution provision (Sections 30200 and 30007.5) that allows a conflict between two competing Coastal Act policies to be resolved in favor of that policy which on balance is the most protective of coastal resources. In this case, the Commission believes there is a conflict between wetland protection policies on the one hand, and the public access and recreation policies on the other. The public access and recreation policies encourage access to coastal access and recreation areas, and this project provides needed access to numerous such facilities. The Commission further believes that the wetland impacts associated with this project will not be significant in light of the fact that the project is the least damaging feasible alternative and adequate mitigation measures have been provided. In particular, TCA will mitigate project impacts on wetlands by creating new wetlands at a ratio of 4:1. Thus, pursuant to Sections 30200 and 30007.5 of the Coastal Act, the Commission finds that it is more protective of significant coastal resources to provide access to these facilities than to disallow approximately one third of an acre of wetland impact in this situation.

Regarding the second of these issues, the project would remove about 150+ acres of coastal sage scrub habitat, the habitat for the California gnatcatcher. However, of this habitat approximately 140 acres are outside the coastal zone. While TCA is still in the process of providing information and mitigation commitments on the California gnatcatcher to the Fish and Wildlife Service, pursuant to Section 7 of the federal Endangered Species Act conferencing provisions, TCA has further committed to mitigate this project's effects on the coastal zone by providing $400,000 to be used to plant

additional gnatcatcher habitat in the project area. While the project is not consistent with Section 30240 due to its effects on gnatcatcher habitat, as the Commission found with respect to the wetland policies, with these commitments to mitigate the project's impacts on environmentally sensitive habitat in the coastal zone, the project is consistent with the Coastal Act pursuant to Sections 30200 and 30007.5. In making this determination the Commission finds that it is more protective of significant coastal resources to provide access to access and recreation facilities (see previous paragraph) than to disallow the gnatcatcher impacts in this situation.

Regarding the third of these issues, TCA has committed to aggressive mitigation measures to protect water quality (Exhibit 21), to collect baseline data, which is critical to determining post-construction compliance, and to submit its baseline water quality monitoring program to the Executive Director of the Commission for his review and approval. These measures include assurances that if the monitoring indicates adverse impacts are occurring, these will be remedied (see Addendum to Staff Recommendation, attached as Exhibit 27). These measures bring the project into conformance with the water quality provisions (Sections 30230, 30231 and 30412) of the Coastal Act.

With regard to TCA's contention that the Commission has approved other road facilities, the Commission notes that none of these projects involved identical situations. For instance, the Ballona and Bolsa Chica road approvals actually involved LCP actions. Moreover, each proposed road project involved road construction as part of a restoration program for degraded wetlands. (These projects were permissible under a combination of Section 30233 and 30411.) In short, none of the reasons offered by TCA for finding this project consistent with the allowable use provisions of Section 30233 are persuasive.

(iv) Resolving Conflicts Among Competing Coastal Act Policies

Nevertheless, the number of road projects identified by TCA is indicative of the fact that the Commission has often been confronted with situations where it has been asked to reconcile the public's need for safe and viable public access to the coastline with other Chapter 3 policies on resource protection. Simply put, road projects are frequently point-to-point projects that do not inherently possess the same flexibility, at least in terms of route, that other projects have. As a result, the Commission has been asked to approve road projects which pass through or near sensitive resource areas such as wetlands and environmentally sensitive habitat areas. In these situations the Commission also has been asked to consider that these projects often serve the principal (and frequently competing) policies of the Coastal Act promoting access to the coast.

The present project presents such a conflict between the public access provisions of the Coastal Act and the resource protection provisions. TCA contends that implementation of the public access provisions of the Act will be thwarted if the project is not constructed. TCA States:

> Thus, the No Project Alternative would result in either a significant overload of the transportation system capacity of Pacific Coast Highway or significant adverse impacts to coastal communities and public recreational areas necessitated by future widenings of PCH. The City of Laguna Beach has already stated its opposition to the latter and has articulated a "planned deficiency" approach to PCH through Laguna Beach (in findings of approval for the Irvine Coast Development Agreement EIR). Consequently, the failure to approve the SJHTC would result in impacts contrary to Sections 30001.5, 30210, 31212, 30212.5 30213, 30223, 30240, 30253.5 and 30254 of the Coastal Act either as a result of failing to provide for adequate transportation system access to coastal and upland support recreational areas or as a consequence of impelling the widening of PCH in a manner resulting in significant impacts both to coastal communities and to public recreational areas.

The Coastal Act envisions situations such as this where there may be a conflict between conflicting Chapter 3 policies and provides specific guidance on how these conflicts should be resolved. Section 30007.5 states:

> The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The Legislature therefore declares that in carrying out the provisions of this division such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources. In this context, the Legislature declares that broader policies which, for example, serve to concentrate development in close proximity to urban and employment centers may be more protective, overall, than specific wildlife habitat and other similar resource policies.

Echoing the concern about such conflicts, Section 30200(b), the first section in Chapter 3, the chapter containing the substantive policies of the Act, declares:

> (b) Where the commission or any local government in implementing the provisions of this division identifies a conflict between the policies of this chapter, Section 30007.5 shall be utilized to resolve the conflict and the resolution of such conflicts shall be supported by appropriate findings setting forth the basis for the resolution of identified policy conflicts.

The Commission agrees with TCA that this project presents a conflict between competing policies of the Act that requires resolution in conformity with the provisions of Sections 30007.5 and 30200. As determined by the Commission above, this project will promote public access and recreation along the coast, as well as implement the public access and recreation policies of Sections 30210, 30211, 30212, 30212.5, 30213, 30252 and 30254 of the Coastal Act. These benefits will be lost if the project is not approved. Balanced against these beneficial aspects of the project is the competing fact that the project also will fill .33 acres of wetland for a use that is not allowed by Section 30233. The reality of the situation, however, is that even the impacts of this fill will be mitigated by a wetland replacement program that will replace this lost wetland area at a 4:1 ratio. The Commission also notes that the placement of this fill is the least damaging feasible alternative.

For these reasons the Commission finds, pursuant to Sections 30007.5 and 30200 of the Coastal Act, that on balance it is more protective of coastal resources to resolve this conflict by approving the project and allowing the proposed wetland fill. Not only will this project provide access to the recreational facilities in the project vicinity in accordance with the public access policies of the Act, it also will provide replacement wetland acreage at a 4:1 ratio to mitigate for the fill of .33 of an acre of wetland. Conversely, disallowing this project to preserve this one third of an acre of wetland is not necessary to protect coastal resources in this situation and more significantly would defeat implementation of the public access and recreation policies of the Coastal Act. The Commission therefore finds the project consistent with the Coastal Act in reliance on the conflict resolution provisions of Section 30007.5 and 30200.

> Unfortunately, it appears that the gnatcatcher and coastal sage scrub may be further impacted or depleted due to the cumulative effects of other local (and Corridor) projects. Cumulative effects are those impacts of future State and private actions affecting endangered and threatened species that are reasonably certain to occur in the action area. Many of these planned or active projects (e.g., Foothill Transportation Corridor) have not provided or proposed substantive mitigation or project-related impacts to the gnatcatcher or coastal sage scrub habitat.
>
> We expect that a mutually acceptable habitat compensation plan will be developed that provides substantial compensation for project-related impacts. The Service has major concerns regarding potential project-related, cumulative, and growth-induced impacts to the gnatcatcher, coastal sage scrub, and many other sensitive species that reside therein.

Commission Conclusion. Based on the information presented, the Commission finds that the project's effects on gnatcatcher habitat constitute adverse impacts on environmentally sensitive habitat within the coastal zone. Thus, the project is inconsistent with the requirements of Section 30240 of the Coastal Act.

As the Commission has previously found, however, this project is consistent with and promotes other policies of the Act relating to public access and recreation, including Sections 30210, 30211, 30212, 30212.5, 30213, 30252 and 30254. As also discussed above, when dealing with permits which promote some policies of the Act, while conflicting with others, the Commission is required to resolve such conflicts by balancing and reaching the decision which is most protective of coastal resources. (See Sections 30007.5 and 30200(b).)

In conducting this balancing function in this situation the Commission notes that only a small portion of the project, approximately one half of a mile, is located in the coastal zone. Additionally, TCA is currently engaged in the conferencing process with the U.S. Fish and Wildlife Service to fully assess the project's impacts on the gnatcatcher and develop any necessary mitigation measures. The Fish and Wildlife Service expects that this process will lead to the development of a "mutually acceptable habitat compensation plan." TCA also has made further commitments to the Fish and Wildlife Service to do what is necessary to accommodate the gnatcatcher, as noted in FWS' November 9, 1992, letter to the Commission (Exhibit 29), which states:

> We are extremely gratified to learn that the TCA, the project sponsor, is presently committed to de everything that is necessary and required to insure that a viable reserve or reserves will be established in the San Joaquin Hills and environs to accommodate the gnatcatcher and coastal cactus wren (Steve Letterly, personal communication, 9 November, 1992).

Finally to assure that any habitat compensation plan developed by TCA and the Fish and Wildlife Service will be sufficient to offset any impacts to the small portion of the gnatcatcher habitat that will be located in the coastal zone, TCA has agreed to incorporate the following commitment:

TCA shall provide funding assurances to the satisfaction of the Executive Director that guarantee that $400,000 will be deposited in an interest bearing account from toll revenues, payable to the Coastal Conservancy no later than one year after commencement of operation of the toll road. The funds will be used to improve gnatcatcher habitat in the project area. This requirement shall be above and beyond current TCA mitigation commitments.

Based on these commitments and understandings regarding the Fish and Wildlife Service conferencing process, the Commission finds that on balance approval of this project will be most protective of coastal resources, while also promoting the Coastal Act's objectives of promoting public access and recreation. For this reason, the Commission finds the project is consistent with the Coastal Act.

(iii) General Wildlife Impacts.

TCA states:

Orange County, in conjunction with major landowners and with the City of Laguna Beach, has for the last decade gained binding commitments of major blocks of open space/habitat/recreation lands known as the Laguna Greenbelt. All of these lands have been assembled with the intent of creating large blocks of contiguous open space lands. These large blocks of open space would provide a much greater degree of habitat protection than attempting to mitigate projects one by one with a resulting fragmentation of habitat/open space areas.

An example of such an approach is the creation of the 3,400-acre Aliso Greenbelt. Similarly, the Irvine Coast Open Space Dedication program will provide for the preservation of 2,666 acres of habitat and open space lands, which in combination with the 2,800-acre Crystal Cove State Park (created through State purchase and the Moro Ridge gift by The Irvine Company) will result in over 5,000 acres of contiguous open space/habitat areas. Another County action requiring the dedication of the Laurel Canyon area, which is contiguous with this 5,000-acre greenbelt, will add another 675 acre of open space/habitat.

The individual open space dedications by area developments do not discount the fact that wildlife habitat continues to shrink in size in the south County. The County's Laguna Greenbelt open space preserve does not create more habitat. There is a net loss of wildlife habitat due to Corridor construction. As stated above, this is a significant impact and an unavoidable loss of open space/wildlife habitat.

As partial mitigation for impacts to wildlife movement, three wildlife crossing features have been added to the project design. These three crossings are located in Laguna Canyon (west of and parallel to Laguna Canyon Road), the interface of Shady and Emerald Canyons and at the head of the western fork of Bommer Canyon. Design modification in the Bonita

January 29, 2008

Chairman Patrick Kruer
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Re: Supplemental Comments re Opposition to Coastal Consistency Certification for Foothill Transportation Corridor-South (San Onofre State Beach): (CC-018-07)

Dear Chairman Kruer and Honorable Commissioners:

This letter provides additional responses to the January 9, 2008 document entitled "Response to Coastal Commission Staff Report Released September 2007," ("TCA Response") submitted by the Foothill/Eastern Transportation Corridor Agency in support of the proposed Foothll-South Toll Road project.

The proposed Toll Road represents one of the greatest threats to California's coast in recent memory. It would be the first known example of a local governmental entity taking State park land for its own highway purposes. It would destroy coastal recreational facilities that the Commission itself ordered created as coastal access mitigation, and threatens one of the greatest surfing beaches in the world. It is located at an endangered species "ground zero," cutting a gash along one of the last intact natural watersheds in southern California.

What's more, TCA would sacrifice these resources for a project that is utterly unnecessary. Improving Interstate-5 and arterials – which will ultimately need to occur with or without the toll road – can match the congestion reduction of the Toll Road at a fraction of the displacement impacts alleged by TCA. Indeed, ***two of the nation's leading highway engineers have concluded that TCA's rejection of design alternatives is premature and invalid.***

The Commission's detailed and painstakingly documented Staff Report correctly concludes that the project is fatally inconsistent with numerous enforceable policies of the California Coastal Act, and that no mitigation measures – including the TCA's proposed check to the California Parks Department – can remedy those inconsistencies.

EXHIBIT 4
Application No.
CC-018-07
2nd Addendum

The TCA Response attacks the Staff Report, asserting that it contains "factual errors, misrepresentations, distortions, baseless conclusions, and egregiously misleading statements." But it is the TCA Response – in its desperate effort to show that this unprecedented project will cause no harm – that is factually erroneous, misleading, and based on groundless conclusions. This letter does not address all of numerous problems with the TCA Response but focuses on the main issues raised therein. As we discuss, none of the information submitted by TCA alters the conclusion reached by Staff that the Toll Road would have numerous unmitigable impacts to coastal resources and is inconsistent with the Coastal Act.

I. TCA Mischaracterizes the Project

2.2 Mile Project vs. 16 Mile Project. Seeking to downplay the enormity of the Project and restrict the scope of the Commission's jurisdiction, TCA mischaracterizes the nature and scale of the Project. TCA asserts that the "project" is limited to "2.2 miles" of improvements, "1.4 million cubic yards" of grading, and a footprint of "138 acres," all within the coastal zone.[1] The basis for this description is TCA's erroneous assertion that the "Coastal Commission's jurisdiction is limited to those portions of the [toll road] proposed in the coastal zone."[2]

As discussed in our prior letter, the law is absolutely clear that the location of a project's footprint is irrelevant to the Commission's consistency review. What is relevant is whether the project will have *impacts* to coastal zone use or resource. Under the Coastal Zone Management Act ("CZMA"), consistency review applies to any "activity, in ***or outside of the coastal zone***, affecting any land or water use or natural resource of the coastal zone . . . ." 16 U.S.C. § 1456(c)(3)(A) (emphasis added); *see also California ex rel. California Coastal Comm'n*, 150 F. Supp. 2d at 1052 (CZMA requires that activities "within *or outside* the coastal zone" that affect coastal zone resources must be consistent with coastal laws (emphasis added).

It is important to note that the direct impacts of the Toll Road's coastal zone footprint are so severe that the Project could not be found consistent with the Coastal Act even if the Project's indirect impacts on the coastal zone were completely ignored. Nevertheless, the Commission is required by law to consider both the direct and indirect impacts on coastal resources of the Project as a whole.

4 Lanes vs. 6 Lanes. TCA also asserts that "the project includes only four lanes of traffic, two in each direction."[3] This statement follows a pattern by TCA of obscuring the description of the Project and the scale of what it actually intends to build. The CEQA documentation for the Project makes clear that the preferred alternative *is not limited to four lanes*. The "ultimate corridor" for the preferred alternative – which is what the EIR purported to analyze and what TCA approved – is *six lanes*:

> The Preferred Alternative is proposed at a width that is the *same as the initial corridor identified in the Draft EIS/SEIR and would be a maximum of six lanes.*[4]

[1] TCA Response at 1-2.
[2] *Id.* at 1.
[3] *Id.*
[4] South Orange County Transportation Infrastructure Improvement Project (SOCTIIP): Final Subsequent Environmental Impact Report (December 2005) ("FSEIR") at 2-5 to 2-6 (emphasis added).

The referenced "initial" corridor was described in the Draft EIS/SEIR as four lanes with the ability to "accommodate" two additional HOV lanes for a total of six lanes, compared to the "ultimate" corridor of 8 lanes.[5] This is further illustrated by the "Typical Corridor Cross Sections" diagram for the original project, which shows the "initial" corridor as 128 feet (six lanes) for the northern half of the road, and as 89 feet expandable to 128 feet for the southern half, in contrast with an "ultimate" corridor of 156 feet (eight lanes).[6]

It is thus disingenuous for TCA to assert that the project is no more than 4 lanes. TCA has approved a 6-lane project and intends to build a 6-lane project.

Indeed, in its traffic modeling for the Project – the very modeling that TCA relies upon for its claims that the Toll Road will relieve congestion – TCA used the "ultimate" corridor:

> When modeling traffic forecasts for the corridor alternatives under year 2025 conditions with the FTC-S in operation as a toll road, ***the configuration of the FTC-S under the ultimate corridor alternative was assumed*** in order to determine the maximum traffic demand on the FTC-S.[7]

This traffic report was prepared in 2003, when the "ultimate" corridor was still *8 lanes*. Thus, TCA's traffic modeling assumes an 8 lane facility. The report goes on to state that a capacity analysis was performed for the "initial" corridor.[8] That capacity analysis assumes *6 lanes* for the entire length of the Foothill South.[9] Thus, at most, TCA has considered the traffic effects of the Toll Road as a 6 lane facility. ***TCA never performed traffic modeling or a capacity analysis for a 4 lane facility.***

If the Toll Road is assumed to be only 4 lanes, capacity will be cut by an additional lane in each direction, decreasing levels of service and increasing congestion on the Toll Road. Indeed, for some segments, TCA's projected traffic would *exceed maximum capacity* of the lanes.[10] As a result, fewer drivers would choose to pay to use the Toll Road, and instead would take the I-5 or arterials. This would reduce the Toll Road's stated traffic benefits to an extent that can be known only by modeling the road at 4 lanes. No such modeling has been done.

It is unclear from TCA's materials whether its analysis of impacts assumed a 4-lane or 6-lane facility for purposes of determining roadway footprint, disturbance limits, and other aspects of the road that bear on the Project's impacts. If TCA assumed 6 lanes (which it should have), then is insistence on describing the Toll Road as 4 lanes is disingenuous. If, on the other hand, TCA assumed only 4 lanes, then it has substantially understated the impacts of the Project, which has an ultimate buildout of 6 lanes. TCA may not piecemeal the environmental analysis of the

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[5] *See*, FSEIR at 2-146 to 2-147, Table 2.5 (showing original DSEIR description of "initial" cross-section for most segments, including those from Pico to I-5, as "Four GP [General Purpose] lanes. Could accommodate two future HOV lanes.")

[6] FSEIR at Figures 2.5-2 and 2.5-3 (following page 2-115).

[7] SOCTIIP Traffic and Circulation Technical Report, Austin Foust, December 1, 2003 at 1-12.

[8] *Id.*

[9] *Id.* Appendix D, Table D-32.

[10] Smart Mobility, Inc., *Capacity Analysis for the Proposed Foothill South Toll Road, Memorandum to NRDC,* January 29, 2008.

full project by addressing only the initial phase in its certification. Nor may it assert the *benefits* of the project assuming 6 lanes while limiting its *impacts* analysis to a 4 lane project.

TCA, as the applicant, has the burden to provide the Commission with all of the data and information necessary to support the certification. *See* 15 C.F.R. §§ 930.57(a), 930.58(a)(1)(ii). Uncertainty on such a fundamental question as whether TCA analyzed the impacts of 4 or 6 lanes clearly violates these obligations of full disclosure. The Commission should deny the consistency certification on this basis and demand that TCA clarify whether its impact analysis assumes the Toll Road's ultimate 6 lane configuration. If only 4 lanes were assumed, the extent of the Project's impacts have been substantially understated, and the Commission should demand that TCA disclose the impacts of the Toll Road with 6 lanes. TCA cannot permissibly support a consistency certification by claiming the *benefits* of a six-lane road while addressing the *impacts* of a smaller, four-lane facility.

II. The Project Will Destroy High Quality ESHA and Impact Numerous Endangered and Threatened Species

The Toll Road would run right through one of the most unique and biologically significant coastal habitats in California: a mosaic of riparian wetlands, marsh vegetation, estuarine environs, sandy soils and coastal sage scrub that is exceedingly rare in southern California, supporting at least five federally listed species and comprising part of *the largest most ecologically intact block of habitat remaining on California's south coast*.[11] As the Staff Report correctly concludes, "it would be difficult to imagine a *more* environmentally damaging alternative location for the proposed toll road and one which would be more clearly inconsistent with the environmentally sensitive habitat resource protection requirements contained within Coastal Act Section 30240."[12]

Incredibly, the TCA Response seeks to downplay the biological significance of the ESHA and the impact the Toll Road would have on the species that depend on it. As discussed below, and in the expert reports we have submitted to the Commission, TCA's assertions that the habitat is not used or not needed by listed species, or that proposed mitigation will take care of the problem, are simply unfounded.

A. Coastal sage scrub and California gnatcatchers

Coastal sage scrub provides important habitat for the threatened California gnatcatcher. The TCA, through consultant Dennis Murphy, acknowledges that the project will impact coastal sage scrub in the coastal zone, but attempts to downplay the quality of the habitat, stating that a "substantial portion" was "previously used in agriculture" and are in a "degraded condition," and that due to this and the proximity to I-5, a "significant portion" of the coastal sage scrub is "not occupied by gnatcatchers."[13]

To the contrary, a January 12, 2008 site visit by Robb Hamilton, an ornithologist with special gnatcatcher expertise, found that none of the site's sage scrub habitat is "degraded." Less

[11] Spencer, Letter of January 10, 2008, at 2.
[12] Staff Report at 4.
[13] D. Murphy, letter of January 7, 2008 at 5

than 7 acres were found to be of low habitat value, and then only because that land is steep, narrow and isolated, not because of past agricultural activities. Mr. Hamilton identified *at least 27 acres* of high quality coastal sage scrub suitable for nesting directly in the path of the Toll Road. Indeed, after only minutes of observation, Mr. Hamilton ***observed and photographed gnatcatchers where Dr. Murphy suggested they would not be***. Mr. Hamilton expects widespread occupancy by gnatcatchers in this habitat.[14] Prior agricultural use was only apparent in a limited portion (6.4 acres) of the coastal sage scrub, and this area has is considered by Mr. Hamilton to be good potential nesting habitat for the gnatcatcher.[15] Moreover, both Mr. Hamilton's observation of gnatcatchers on the site and the scientific literature confirm that proximity to a noise source such as I-5 does not prevent gnatcatchers from using suitable habitat.[16] Thus, TCA's assertions as to habitat quality are demonstrably false.

Also false are TCA's continued assertions that current protections from the Natural Community Conservation Plan are sufficient for coastal sage scrub and the threatened California gnatcatcher.[17] As discussed in our prior letter, the Toll Road is not a "covered project" under the Orange County Southern Subregion HCP. It is neither addressed by nor mitigated for by that plan.[18] Indeed, the entirety of San Onofre State Beach is located in San Diego County and is *outside* of the NCCP/HCP Planning Area.[19]

TCA's continued reliance on proposed off site "mitigation" is also flawed. As stated in our prior letter, Coastal Act does not permit projects within ESHA, regardless of any offer of off-site mitigation. *Bolsa Chica Land Trust v. Superior Court*, 71 Cal. App. 4th 493, 506-07 (1999); *Sierra Club v. Cal. Coastal Comm'n*, 12 Cal. App. 4th 602, 611 (1993).

But even if it were permitted, the proposed mitigation cannot compensate for the habitat that would be lost by the Project. TCA relies on a 327-acre proposed restoration site in an inland location of Chiquita Canyon.[20] But this site is supposed to provide mitigation for the *385 acres of sage scrub impacted by the entire 16-mile Toll Road project*.[21] TCA does not explain how it will make up this *net loss* of habitat, much less how such a net loss could possibly be considered compensation for the ESHA destroyed by the project. More importantly, the inland restoration site, with different climate conditions, cannot replace the unique values of a maritime location for the gnatcatcher, such as higher reproductive success and lower winter mortality.[22]

TCA's recent proposal to give money to the State Parks Department for restoration in Crystal Cove State Park is also defective. That restoration effort was planned long before TCA's offer, and indeed is mostly completed. According to the State Parks District Ecologist, only "tens of acres" remain to be restored (mostly a mile inland), and that it will be accomplished

[14] R. Hamilton, *Letter to California Coastal Commission*, January 16, 2008 at 6-7.
[15] *Id* at 2,6.
[16] *Id.* at 7.
[17] TCA Response at 31.
[18] Southern Subregion Natural Community Conservation Plan ("SSNCCP"), EIR/EIS at 1-26 to 27, http://www.ocplanning.net/docs/ssnccp/EIR-EIS/nccp_eir_ch_01.pdf.
[19] SSNCCP, Figure 3-M, http://www.ocplanning.net/docs/ssnccp/Mapbook/figure003_m.pdf.
[20] TCA Response at 31.
[21] *See* FEIR at 4.11-96, Table 4.11-4A.
[22] W.D. Spencer, Ph.D., *Letter to California Coastal Commission*, August 17, 2007 at 3.

irrespective of the TCA's offer.[23] Moreover, the proposed location cannot reproduce the rich mosaic of coastal estuary, marsh, lush riparian woodland, sandy soils, and associated uplands that makes San Onofre so ecologically unique, and neither site has the watershed integrity of San Onofre.[24] Piecemeal actions directed at only one component of a complex ecosystem will never restore the values lost.[25]

Thus, even if off-site mitigation of ESHA were legally permissible (which it is not), and even if TCA had proposed mitigation that could be counted as real net increase in sage scrub habitat (which it has not), the significant disruption of the unique coastal sage scrub ESHA at the San Onofre site could not be mitigated in the locations identified by TCA.

B. Arroyo toad

TCA asserts to the Commission that the arroyo toad does not occupy "the coastal zone portion of the project."[26] This is at odds with its own EIS/SEIR for the project, which documents multiple locations at the boundary of the grading footprint within the coastal zone.[27] Furthermore, according to Robert Lovich, an arroyo toad expert with extensive field experience in the area of the project:

> [E]ven if these particular surveys did not find the arroyo toad, the fact remains that they do occur within the footprint of the project within the coastal zone. Overwhelming evidence for this exists in the collections, peer-reviewed literature, contract reports, and my own personal observations.[28] Precise locations in reports plus the mobile nature of this species guarantee occupation and utilization of the project footprint by arroyo toads. TCA thus ignores the best available scientific information amassed over decades of work on the arroyo toad in San Mateo Creek.[29]

A map showing occupied arroyo toad habitat in the coastal zone is attached. Lovich concludes that, "Any construction or disturbance activities in lower San Mateo Creek within or adjacent to the coastal zone will directly result in impacts to occupied arroyo toad habitat."[30]

In its assessment of impacts, TCA confuses the discrete footprint of the Toll Road with its effects of cutting the arroyo toad off from essential foraging habitat and blocking connectivity between watersheds. According to Lovich, the miles of impenetrable barrier represented by Toll Road, would cause "potentially irreversible fragmentation of arroyo toad populations within and without the coastal zone."[31] The management measures that TCA proposes do nothing to reverse the impacts of this fragmentation and thus the results of construction upstream will be felt with severe consequences in the coastal zone.

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[23] D. Pryor, District Ecologist, California Department of Parks and Recreation (pers. comm. Jan. 7, 2008).
[24] W.D. Spencer, Ph.D., *Letter to California Coastal Commission*, January 10, 2008 at 1-2.
[25] *Id.* at 3.
[26] TCA Response, Executive Summary at 8.
[27] SOCTIIP EIS/SEIR, Figure 4.11-3e, "Herptiles," 2007.
[28] Holland and Goodman 1998, Shanahan 1998, Atkinson et al. 2003, Brehme et al. 2006, pers. obs.
[29] R.E. Lovich, Letter to California Coastal Commission, January 21, 2007 (hereafter referred to as *Lovich 2008 Letter*) at 1.
[30] R.E. Lovich, *Letter to California Coastal Commission*, August 16, 2007 (hereafter "*Lovich 2007 Letter*") at 2.
[31] *Lovich 2007 Letter* at 4.

On a more site-specific level, TCA asserts that bridge spans for the toll road would be above the river and that therefore impacts to arroyo toad are limited to the footprint of the supporting bridge columns. This statement is flawed. "Impacts to the toads will occur simply by spanning the bridge over its habitat. *It is widely known that arroyo toads do not breed beneath bridges because shading reduces the capacity for thermoregulation of these poikilothermic organisms.* Even a permanent shadow cast across the creek from 50 feet above will cause a reduction of habitat and impacts to existing and occupied arroyo toad habitat."[32]

Dr. Murphy attempts to dismiss the importance of the coastal population impacted by the Toll Road.[33] According to Lovich, the Toll Road "would impact *one of only three coastal populations extant in the United States*. The arroyo toad historically occurred in all rivers of southern California terminating only where the saltwater influence begins. The Toll Road as proposed *would further reduce the potential for one of the last three populations to survive in perpetuity*."[34]

TCA also makes the baseless accusation that Commission staff of "fabricated" a "coastal population" of arroyo toads, and asserts "[t]here is absolutely no scientific evidence that arroyo toads closer to the coast are any different from those inland."[35] This statement is *flatly contradicted* by the M.S. Thesis by Shanahan (1998), which conclusively proves otherwise. Arroyo toads are significantly different genetically in coastal portions of San Mateo and San Onofre Creek than populations farther inland or in other watersheds.[36] As a result, "[t]he Toll Road would reduce the gene flow between populations necessary to avert deleterious inbreeding by cutting off connectivity."[37] Thus, not only would the Project directly impact a genetically distinct coastal population, but it would also impact and cut off upstream populations that are integrally linked with the coastal population.

Finally, the TCA's attempted reliance upon the Camp Pendleton Integrated Natural Resource Management Plan (INRMP) is misplaced. This plan does not address the Toll Road.[38]

In short, much of the TCA's response is simply unsubstantiated assertion. The arroyo toad is endangered throughout its range, and with viable populations still extant in only the most intact watersheds, such as that of San Mateo Creek. This species cannot afford the Toll Road.

C. Pacific pocket mouse

The Pacific pocket mouse is one of the world's most endangered species, and it is one that is linked inextricably with the California coast. The Toll Road would run through habitat within the coastal zone that is essential to the PPM, because of both its potential occupation by one of only four remaining PPM populations left on earth and as essential expansion habitat for

[32] *Lovich 2008 Letter* at 2 (emphasis added).
[33] Murphy letter at 4.
[34] *Lovich 2008 Letter* at 2-3 (emphasis added).
[35] TCA Response at 22.
[36] *Id.* at 3.
[37] *Id.*
[38] *See* Marine Corps Base Camp Pendleton, Integrated Natural Resources Management Plan (March 2007) available at http://www.cpp.usmc.mil/base/environmental/inrmp.asp.

that population. The Toll Road would also permanently isolate that population from others to the east, greatly reducing chances for expansion and survival.

TCA makes the claim that, based on a new "habitat suitability" model developed by its consultants and on its trapping efforts, the coastal zone portion of the Project has only 0.6 acres of suitable PPM habitat.[39] This claim was reviewed by Dr. Wayne Spencer, one of the leading authorities on PPM. Dr. Spencer served as Principal Investigator for the comprehensive base-wide surveys for this species on Marine Corps Base Camp Pendleton (Ogden Environmental & Energy Services 1997) and for a recent study of PPM distribution relative to military training roads in the largest extant PPM population.[40] He served as a Science Advisor to the USGS and USFWS team that is preparing a long-term monitoring and research program for the species (Brehme et al., in prep.).

Dr. Spencer points out that TCA's PPM habitat evaluation model is flawed in numerous aspects. The consultant used coarse-scale USDA soil maps when a finer scale is necessary. According to Dr. Wayne Spencer:

> This map cannot be used to rule out PPM occupancy from portions of the study area, either currently or in the future . . . PPM have also been captured well within the boundaries of other soil types that are generally unsuitable for PPM due to high clay content, hundreds of meters from predicted "suitable" soils. For example, PPM have been repeatedly captured on Huerhuero loams having clay subsoils and vernal pool-mima mound topography in the Oscar One and Edson Ranges.[41] PPM can occur in these apparently unsuitable soil polygons because they encircle unmapped inclusions that *are* suitable for PPM.[42]

TCA's field sampling was completely insufficient to rectify the model's defects.[43]

The uses by TCA of parameters other than soil – slope, vegetation, and previous disturbance – are similarly flawed. For example, vegetation criteria are overly narrow. "The greatest concentrations of PPM in the Oscar One training area are not in scrub communities, but rather in open grassland or ruderal situations, and it is general consensus amongst PPM biologists that PPM do not require shrub cover."[44] The slope and disturbance parameters are based on untested hypotheses, and indeed there is evidence that runs counter to those hypotheses.[45] The parameters used by TCA simply cannot accurately predict the current or future occupation of the land by PPM.[46]

TCA's contention that PPM are absent from the coastal zone because they did not trap them is similarly flawed. As Dr. Spencer – who as Principal Investigator has overseen hundreds of thousands of hours of PPM trapping – points out, the Pacific pocket mouse is notoriously

[39] TCA Response at 16-18.
[40] Spencer 2007.
[41] SJM Biological Consultants 2003, Spencer 2007, USFWS unpublished data.
[42] W.D. Spencer, *Letter to California Coastal Commission*, January 17, 2008 at 4.
[43] *Id.* at 4- 5.
[44] *Id.* at 5.
[45] *Id.* at 5.
[46] *Id.* at 6.

difficult to capture due, for example, to periods of inactivity or "torpor."[47] Furthermore, the TCA focused its trapping in areas where the mice were first found, rather than in other potential habitat. Due to "unpredictable above-ground detectability . . . Absence of captures does not prove absence of PPM, especially given the dearth of sampling in portions of the study area."[48]

TCA also ignores the fundamental natural history of the species. The PPM relies on cyclical population expansions in good years to ensure bare survival in bad years. Besides eliminating some currently occupied habitat, the Toll Road would also eliminate much essential *expansion* habitat, including expansion habitat that lays within the coastal zone and which constitutes ESHA on this basis.[49] The result is a severe increase in the risk of extirpation of the critical San Mateo North population – one of only four remaining population groups.[50]

The response to PPM by TCA and its consultants is also improper in suggesting that the Commission should focus only on the impacts of the portion of the Project within the coastal zone. The PPM is a truly coastal species – which has never been found further than 6 km from the Pacific Ocean – and constitutes an important coastal resource.[51] The Project as a whole will adversely affect this coastal species, which occupies an ESHA that spans the coastal zone.[52]

TCA also relies on a newly proposed Pacific Pocket Mouse Resource Management Plan (PPMRMP) drawn up by Dr. Ramey to mitigate the Project's impacts on PPM. Dr. Spencer reviewed the PPMRMP in detail. The plan errs grievously in contending that management can compensate for a fundamental decline in population "carrying capacity" caused by the habitat loss described above. This is especially true in that TCA's suggestions for maintaining connectivity with other populations are wholly experimental for this species, and therefore do not constitute legitimate mitigation. According to Dr. Spencer, "none of the studies [Ramey] cited involved similar habitats, or heteromyid rodents, or culverts nearly as long as those proposed here."[53] The tiny animals would have to find their way through culverts ranging from 95 to 525 feet in length. This is a very long way for a mouse naturally adapted to open habitats to travel through a pipe.[54] In addition, the culvert TCA believes is most likely to be used is approximately 2,600 feet from the nearest capture location, perhaps outside of realistic travel distance. Other proposed mitigation, such as soil salvage, is also completely experimental.[55]

In addition, TCA is working from the fundamentally flawed assumption that building the Toll Road is necessary to accomplish active management of the San Mateo North population. An active management program can occur with or without the Toll Road. But if the Toll Road is built, the removal and fragmentation of occupied and potential habitat would make it much more difficult for such a program to use management to help meet recovery goals.[56]

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[47] *Id.* at 6.
[48] *Id.* at 7-8.
[49] W.D. Spencer, Ph.D., *Review of Impacts to the Endangered Pacific Pocket Mouse by Eastern Alignments of the Proposed Southern Orange County Transportation Improvement Project*, Letter to US Fish and Wildlife Service, August 11, 2005 at 8, Attachment A.
[50] *Id.* at 9.
[51] W.D. Spencer, *Letter to California Coastal Commission*, January 17, 2008 at 10.
[52] *Id.* at 10.
[53] *Id.* at 8.
[54] *Id.* at 9.
[55] *Id.* at 8,9.
[56] *Id.* at 10.

In sum, "FTC-S would seriously impact an environmentally sensitive habitat area (ESHA) that is partly inside and partly outside of the coastal zone, and whose community of species interact biologically across the coastal zone boundary."[57]

D. Aquatic species

TCA asserts that the Project will not adversely impact the endangered southern steelhead trout or the endangered tidewater goby. This is based on TCA's claim that the Project's creation of 530 acres of cut and fill slopes in steep, erodible terrain will not result in increased sedimentation to San Mateo Creek. As discussed in the Water Quality section below, this claim is not supportable. TCA's proposed runoff plan "does not adequately address potentially significant impacts related to hillslope erosion, scour of small drainage channels . . . and the resulting increased delivery of sediment to San Mateo Creek. Ultimately, the inadequacies in the SR-241 RMP could lead to potentially significant impacts to the ecology of the existing lagoon at the mouth of San Mateo Creek."[58]

The subwatersheds and tributaries to San Mateo Creek, including its estuary and lagoon, play a special role in the aquatic ecosystem on which both steelhead and tidewater goby depend for their survival and recovery. As discussed in our prior letter, San Mateo is the only watershed south of Malibu Creek to support a breeding population of southern steelhead.[59] Young steelhead (fry) are especially sensitive to fine sediments and turbidity.[60] Similarly, tidewater goby – found only in the coastal wetlands and estuaries of California, and present in San Mateo Creek Lagoon – are threatened in large part due to siltation.[61]

Sediments and turbidity may be multiplied many times over by road construction projects.[62] The natural watersheds through which the Toll Road would run are presently in equilibrium, but are fragile and "prone to instability and rapid degradation with relatively minor changes in runoff patterns caused by changes in land use. Introducing a new highway through these undeveloped watersheds is likely to result in drastic impacts to both sediment production and channel habitat structure."[63]

Accordingly, TCA's conclusion that the Toll Road will not directly take a significant amount of aquatic habitat is beside the point. The Toll Road will permanently alter the San Mateo watershed and will increase sedimentation impacts to both of these endangered aquatic species downstream in the coastal zone.

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[57] *Id.* at 11.
[58] PWA Letter dated January 22, 2008 at 1.
[59] *Spencer Conservation Priorities* at 36.
[60] K.B. Suttle, et al., *How Fine Sediment in Riverbeds Impairs Growth and Survival of Juvenile Salmonids, Ecological Applications*, Vol. 14 No 4, August, 2004 at 969-974.
[61] Ventura Fish & Wildlife Office: Tidewater Goby, http://www.fws.gov/ventura/sppinfo/profiles/details_fish.cfm?speciesid=122.
[62] A.P. Wheeler, et al., *Impacts of New Highways and Subsequent Landscape Urbanization on Stream Habitat and Biota*, 13 Reviews in Fisheries Science 141, 144-45 (2005).
[63] PWA Letter dated January 22, 2008 at 2.

E. Critical Habitat Designations and Other Resource Agency Actions

TCA wrongly asserts that the removal of federal critical habitat designations for endangered species from San Onofre State Beach bears upon ESHA determination. As discussed in our prior letter, "critical habitat" under the Endangered Species Act does not have to be designated in areas where there are military resource management plans. This procedure has *no relationship* to the intrinsic value of the habitat itself or to the biological determination of ESHA. In this case, while Camp Pendleton's management plan encompasses San Onofre State Beach, the toll road is *not* a covered activity under that plan.[64]

TCA also repeatedly cites to a 2005 "preliminary" USFWS no jeopardy opinion to support its claims regarding the Project's impacts on listed species. Setting aside the fact that these opinions are "preliminary" only, the standard used by USFWS – whether the project would *jeopardize the continued existence of a species* – is not the standard used by section 30240 of the Coastal Act, which protects ESHA from "*any significant disruption of habitat values*." A species need not be pushed to the very brink of extinction to trigger this standard. Even if every listed species impacted by the Toll Road is capable of surviving the Project – a prospect that is far from certain, especially for the pocket mouse – there is no question that the Project will cause a significant disruption of habitat values in the coastal zone.

III. Wetlands

The Coastal Act prohibits filling of coastal wetlands unless the project meets all three tests of Section 30233(a): it must be an allowable use, there must be no feasible less environmentally damaging alternative, and feasible mitigation measures to minimize adverse environmental effects must be provided. The Toll Road fails all three of these tests.

Allowable Use Test. TCA continues to maintain that the Toll Road serves an "incidental public services purpose" under section 30233(a)(4) and is therefore a use allowed in coastal wetlands.[65] Inexplicably, TCA dismisses the Commission's interpretation of this test as prohibiting roadway expansions that expand capacity, [66] despite clear case law upholding that interpretation:

> [W]e accept Commission's interpretation of sections 30233 and 30240… In particular we note that under Commission's interpretation, incidental public services are limited to temporary disruptions and do not usually include permanent roadway expansions. *Roadway expansions are permitted only when no other alternative exists and the expansion is necessary to maintain existing traffic capacity*.

Bolsa Chica, 71 Cal. App. 4th at 517 (emphasis added).

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[64] *See* Marine Corps Base Camp Pendleton, *Integrated Natural Resources Management Plan* (March 2007) at 2-49, available at http://www.cpp.usmc.mil/base/environmental/inrmp.asp.

[65] TCA Response at 47.

[66] *See* California Coastal Commission, *Procedural Guidance for the Review of Wetland Projects in California's Coastal Zone*, ch. 1, § III.B.1.iii, available at http://www.coastal.ca.gov/wetrev/wetch1.html (last visited January 16, 2008).

TCA goes on to argue that the Toll Road nevertheless meets the test because it will reduce congestion and therefore maintain existing capacity. Under this interpretation, virtually *every* roadway project providing congestion relief would qualify. But this is not the test for an "incidental" purpose. Rather, the test is whether the expansion provides *increased* capacity to accommodate *new* traffic. This is precisely what the Toll Road would do. Indeed, increasing capacity to accommodate future development is one of its *stated purposes*.[67]

Further, as the Staff Report correctly points out, the Commission has consistently held in previous matters – including those cited by TCA – that a transportation project that increases capacity cannot be considered an incidental public service. Indeed, the Commission has never considered a new road an incidental public service. The Toll Road cannot meet the allowable use test.

Alternatives Test. The Toll Road fails the alternatives test because there are several feasible alternatives that would avoid the high-quality wetlands impacted by the Project. One such alternative, the AIP-R , is discussed in the Alternatives section below.

Mitigation Test. TCA asserts that, on the basis of a new functional assessment, impacts would be mitigated. However, TCA only considered the *direct* loss of wetlands, and fails to account for wetlands in the coastal zone that are *indirectly* impacted by light, noise, vibration, contaminants, and other edge effects. A conservative estimate is that 5 to 7 acres of wetland and riparian habitat would be permanently degraded, not including the additive effect of the Toll Road on Interstate 5's existing indirect effects.[68] TCA makes no attempt to address these impacts in the 1-acre proposed mitigation area.

The functional assessment used by TCA to assess the impact and mitigation areas is, according to Michael White, an aquatic biologist with 20 years of experience in California, "statistically biased and unsubstantiated."[69] For example, the only consideration of landscape context is the metric "Land Use/Land Cover," whose score is swamped by 20 other metrics. "Furthermore, the landscape position and connectivity of the wetlands in the coastal zone, one of the irreplaceable conservation values of these resources, is not adequately quantified in the analysis." As a result, the true functions and values of the marsh-estuarine-riparian complex at San Onofre are greatly underestimated. [70]

The proposed mitigation area is in the same location as one of the extended detention basins ("EDBs") that TCA has proposed to treat surface runoff from I-5. This location cannot replace the lost functions and values of the natural channels of San Mateo Creek nor possibly mimic the intact hydrology of the San Mateo watershed. The complex of estuary, marsh, riparian habitat, and uplands would therefore be irretrievable damaged. Also, because the entirety of the mitigation area is so close to I-5 and the merging Toll Road, it would *all* be subject to adverse edge effects.[71] Coupled with the fact that no wetlands creation plan is even

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[67] FSEIR at 1-16 (project is to "help alleviate *future traffic congestion* and accommodate the need for mobility, access, goods movement and *future traffic demands* on I-5 and the arterial network in the study area.")
[68] M.D. White, Letter to California Coastal Commission, January 18, 2008, at 3.
[69] *Id.*
[70] *Id.*
[71] M.D. White, Letter to California Coastal Commission, September 14, 2007, at 3.

supplied for the proposed mitigation area,[72] the proposal must be deemed grossly inadequate. "There would clearly be a net loss of regionally significant wetland functions and values and 'significant disruption of habitat values' within the Coastal Zone wetlands as a result of the FTC-S project."[73]

IV. Water Quality and Trestles

The Toll Road would require 41 million yards of cut and fill. This will create 530 acres of wide exposed cut and fill slopes and add over 136 acres of impervious surface within the San Mateo Creek watershed alone, one of the only remaining undeveloped watersheds in Southern California, which lets out at the internationally renowned Trestles surfing beach.[74]

TCA contends that this radical conversion of the landscape will have no impact on the water quality of San Mateo Creek because TCA will implement a Runoff Management Plan. In January, 2008, TCA submitted to the San Diego Regional Water Quality Control Board a document entitled "Runoff Management Plan Supplemental Documentation," dated November 6, 2007 ("RMP"). This document has been reviewed by Philip Williams & Associates, Ltd ("PWA"), a firm specializing in environmental hydrology. As documented by PWA, the RMP fails to adequately address potentially significant impacts related to erosion. The Toll Road will result increased delivery of sediment to San Mateo Creek, impacting the ecology of the lagoon and the surf resource at Trestles.[75]

Sedimentation Impacts. TCA's response to water quality impacts boils down to its claim that "[t]there will not be a new source of 'fine sediment' associated with the project"[76] This claim is simply baseless.

The proposed highway will have major impacts to 20 individual subwatersheds that currently have little development and related impervious area and drain to small channels that convey runoff to San Mateo Creek and Cristianitos Creek.[77] These sand and silt dominated watersheds and related stream systems have developed in equilibrium with the existing rainfall-runoff dynamics. They are fragile and prone to instability and rapid degradation with relatively minor changes in runoff patterns caused by changes in land use. Much of the Toll Road would run through steep terrain that includes steep drainage channels which are very sensitive to increased runoff.[78] As PWA concludes, "introducing a new highway through these undeveloped watersheds is likely to result in drastic impacts to both sediment production and channel habitat structure" and "could easily cause potentially significant impacts in the San Mateo Creek watershed."[79]

[72] M.D. White, Letter to California Coastal Commission, January 18, 2008, at 4.
[73] *Id.*
[74] PWA Letter of Jan. 22, 2008 at 2.
[75] *Id.* at 1.
[76] TCA Response at 85.
[77] PWA Letter of Jan. 22, 2008 at 1-2.
[78] *Id.*
[79] *Id.* at 2.

TCA maintains that it has modeled the projected runoff flows and that there will be "virtually no change" at the discharge points.[80] However, the flow duration plots are misleading: they actually represent only the discrete discharge from the flow splitters and EDBs for *onsite* highway runoff – i.e., runoff from the roadway itself. ***The modeling does not address offsite flows.***[81] As PWA notes: "By examining hydrologic modeling results only at the discharge of specific BMPs, *the total impacts associated with the entire project including the "offsite" and "onsite" runoff management strategies cannot be determined*."[82]

TCA assumes that adjacent slopes will be "stabilized" with native vegetation.[83] However, typical BMPs that may be appropriate in an already developed urban or suburban environment are not adequate protect the undeveloped fragile canyons and steep terrain along San Mateo Creek and Cristianitos Creek from erosion.[84]

The cut and fill slopes are extensive including about 530 acres of disturbed land with cuts as wide as 700 to 800 feet from the highway and up to 250 feet high.[85] The RMP does not provide a detailed description of how these large cut and fill slopes will be stabilized. It relies on source control BMPs including: hydroseeding, ground cover, mulch, longitudinal ditches, down drains, all of which are, at best, only moderately effective. Establishing native vegetation through hydroseeding will be difficult, particularly given the steep slopes, top soil removal, and variable local rainfall patterns.[86] As the Staff Report notes, TCA experienced slope failures in connection with the San Joaquin Hills Transportation Corridor, including 10 feet deep cuts in a 35 acre area "stabilized" through revegetation. By comparison, the Foothill South requires revegetation to stabilize about *530 acres* of cut and fill slopes.[87] TCA's assumption that revegetation will be 100% effective is simply implausible.

Moreover, *the RMP* ***does not propose any treatment control BMPs*** either to control runoff flow rates and volumes or to trap sediments eroded from offsite (i.e., non-road) areas. Without any treatment control BMPs, delivery of fine grained sediments to San Mateo Creek will increase from the cut and fill slopes and runoff discharge.[88]

In short, there is no question the Toll Road will increase sediment delivery to San Mateo Creek.

Impacts to Trestles. "It is no coincidence that one of the world's best surfing resources exists at the mouth of one of the last undeveloped watersheds in Southern California."[89] The surf break at Trestles is dependent on both cobble delivery and the ratio of finer sediments to cobbles. As recent research confirms, a change in the delivery of coarse cobble material or of ratio of

[80] TCA Response at 81.
[81] PWA Letter of Jan. 22, 2008 at 6
[82] *Id.* (emphasis added).
[83] TCA Response at 85.
[84] PWA Jan. 22, 2008 letter at 2.
[85] *Id.* at 4.
[86] *Id.*
[87] *Id.*
[88] *Id.*
[89] *Id.* at 2.

fine-grained sediment to cobble can result in a significant impact to Trestles as the cobble bed breaks down over time.[90]

TCA's response to this issue is again to deny that the Toll Road will cause any increase in sediment delivery to the creek. As discussed above, there is no basis for TCA's position, and sedimentation delivery to the creek will increase. "If the cobble beds that support Trestles are destabilized through altered sediment delivery, *the resulting impact will likely be irreversible and impossible to mitigate*. While the project proponents may be convinced that there will be no impacts, *we are not convinced and rather expect that the surf break will be substantively degraded over time.*"[91]

TCA is asking that the Commission simply trust its assurances that running miles of new highway through undeveloped watershed will not have any effect on water quality – the same assurances that have repeatedly been proven unfounded in the past. Except this time, the stakes are much higher. TCA should not be permitted to play Russian roulette with critical coastal aquatic habitat and one of the world's most important surfing resources.

V. Impacts to San Onofre State Beach

The impacts of the Toll Road on San Onofre State Beach, and on San Mateo Campground in particular, have been set forth in detail in our prior letter and in the Staff Report. Those documents also explain in detail that TCA's attempt to purchase compliance with the Coastal Act by offering $100 million to the Parks Department is legally inadequate and fails to identify any actual mitigation for the Toll Roads impacts.

In its Response, TCA seeks primarily to downplay the value of the Park and Campground as a recreational resource by suggesting that the Navy provided for the Toll Road in its original lease to the State, that the State constructed San Mateo Campground knowing the Toll Road would be built, and that the Navy is unlikely to renew the lease in 2021.[92] None of these statements is accurate.

The Navy's lease with the state of San Onofre dates to 1971, *more than 10 years before the Toll Road was even conceived*, and 15 years before TCA was created. The lease never contemplated a six-lane highway would be built across the Park, and did not provide for such a massive new right of way. To the contrary, future rights of way were expressly limited to those that would not "unreasonably interfere with the use of the [state's] improvements."[93] The location of San Mateo Campground was identified by this Commission in connection with the SONGS coastal development permit amendment application, submitted in 1981, and the construction of campground was mandated by the Commission's 1982 order. Thus, the campground had been identified *before* Orange County placed route 241 on its 1983 MPAH.

[90] *Id.*
[91] *Id.* at 3 (emphasis added).
[92] TCA Response at 55-60.
[93] Agreement of Lease between State of California, Department of Parks and Recreation and United States of America, dated August 31, 1971, Part II (C).

The Parks Department's 1984 General Plan for SOSB acknowledged that the *federal* government was not subject to state regulation, but *never* stated that the *County* or any other local transportation agency that may seek to construct the then-conceptual 241 would be exempt from state law, nor did the Department have any reason to believe that any such local agency would be legally able to site an alignment for the 241 in a manner that would effectively destroy recreational improvements mandated pursuant to the Coastal Act.

There is also absolutely no evidence to support TCA's bald contention that the Marines "may not be willing to extend the lease." Not only have the Marines made no such statement, but TCA's reference to "encroachment" concerns expressed by the Navy has no applicability to the Park. The virtually undeveloped open space provided by the park is compatible with military needs should they arise in the future. Indeed, the existing lease has from the beginning reserved in the Navy the right of access to perform military training exercises. If anything, it is the *Toll Road* that will constitute an "encroachment" on future military use, both in terms of physical structure and by putting greater pressure on natural resources, increasing the "regulatory encroachment" TCA refers to for the remainder of the base.

TCA's Response also claims that the impacts of the Toll Road on the Campground have been "exaggerated" and will not be significant. TCA contends that because the Bluffs campground is near the I-5 and is nevertheless used, the San Mateo Campground will remain viable. In fact, the location of the Bluffs to the west of I-5 places it upwind of the prevailing winds, which has a significant effect in reducing noise levels. Incredibly, TCA points favorably to noise studies that show that, after mitigation, sound levels within San Mateo Campground would be "reduced" to 67 decibels. This is higher than the level – 65 decibels – that *speech interference* begins. It is impossible to understand how a campground can meaningfully function in such an environment.

There is no way to downplay the significance of the Toll Road's impacts to the SOSB and the San Mateo Campground. The project will irreparably destroy the recreational value of this irreplaceable camping resource and most like require its closure. The Project is in irreconcilable conflict with the coastal access and recreation policies of the Coastal Act.

VI. Alternatives

The AIP-R is feasible and TCA's displacement estimate is baseless. The most significant misrepresentation in all of TCA's materials is its continued insistence that the environmentally superior AIP alternative cannot be built without displacing 1,300 existing homes and businesses. This claim is sheer fabrication, based on a footprint designed literally to maximize displacements – one that is not backed up by any study or analysis.

That TCA has never made any attempt to design a rational AIP alternative is plain. In example after example, TCA's AIP footprint shows property impacts that are completely unnecessary have no basis in reality:

- Numerous homes along the corridor were counted as "displacements" even though they are well outside the needed construction limit – by over 100 feet in some cases.[94]

- Clover-leaf and other large-footprint interchange designs were used in populated areas despite the availability of numerous alternative designs, without any analysis.[95]

- Detention basins and other runoff treatment measures that could have been sited and sized in undeveloped roadside areas were instead located on top of residential subdivisions and configured to maximize displacements.[96]

- Arterial improvements that TCA's own data shows would equal or exceed the congestion relief provided by the Toll Road were ignored in favor of improvements with greater displacements.[97]

TCA's recent response to these issues has been twofold. First, it seeks to show that its own designs "meet minimum Caltrans [Highway Design Manual] criteria."[98] This fact misses the point. The question is not whether TCA's designs meet design criteria, but whether there are any *other* designs that could meet those criteria while minimizing displacements. TCA has never provided any study or analysis indicating the slightest attempt to evaluate alternative designs. This is not a valid approach to highway design.

Two of the nation's leading highway engineers – Philip J. Clark, PE, [99] and Peter M. Melewski, PE[100] – agree. Mr. Clark and Mr. Melewski, now with Bergmann Associates, Inc., a nationally renowned engineering firm based in New York State, have decades of experience designing public highways, including (in the case of Mr. Melewski) the New York State Thruway – the longest toll road in the nation. As they put it:

> The AIP alternative as developed by TCA does not demonstrate the level of innovation and context sensitivity typically undertaken for projects in a tight urban environment characteristic of the I-5 corridor and its ancillary arterial network. Until TCA undertakes

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[94] Smart Mobility, Inc., *An Alternative to the Proposed Foothill South Toll Road; The Refined AIP Alternative Design Modifications to Reduce Displacements*, Revised January, 2008 ("*Revised Smart Mobility 2008 Study"*) at 4-7, 23.
[95] *Id.* at 14-22.
[96] *Id.* at 14-22, Appx. 2.
[97] *Id.* at 25-26.
[98] TCA Response at 120.
[99] Mr. Clark is the former Deputy Chief Engineer and Director of Design for the New York State Department of Transportation. He was also a member of the American Association of State Highway and Transportation Officials' (AASHTO) Technical Committee on Geometric Design which authors AASHTO's "A Policy on Geometric Design of Highways and Streets." The "Green Book", as it is often referred to, is the national policy and guide used as the basis for design by all fifty states and the Federal Highway Administration (FHWA). Mr. Clark was also a member of the AASHTO Joint Task Force that authored "A Guide for Achieving Flexibility in Highway Design."
[100] Mr. Melewski is former Director of Design and Superintendent of Maintenance for the New York State Thruway Authority, one of the largest tollway systems in the world and the longest tollway in the United States. As the Director of Design, he oversaw the development and implementation of all highway, bridge, environmental, canal and ITS capital projects. Mr. Melewski has served on several national panels on transportation issues for organizations such as AASHTO and National Cooperative Highway Research Program, in which California Transportation agencies actively participate.

> a study that demonstrates innovation and context sensitivity, ***their estimate of right-of-way impacts for the AIP alternative should be considered invalid and much greater than necessary.***[101]

As explained in the Bergmann Review, the question TCA should have been asking is: "[what is the] revised AIP alternative that Caltrans would be expected to develop if the toll road alternatives did not exist?" To this day, TCA has made no attempt to answer this question.

The second prong of TCA's response has been to seek to discredit the only study to date that *has* sought to answer the question posed by Bergmann: the AIP-R Alternative Study prepared by Smart Mobility. TCA's concerted effort to find fault with that study -- no matter how minor or inconsequential the issue -- reflects its determination not to identify but to preclude feasible alternatives to its preferred alignment through coastal EHSA and a state park.

Nevertheless, the AIP-R study has been revised to address the issues raised by TCA and Caltrans. The revised conceptual-level designs still show that ***displacement reductions in the range of 95% can be achieved*** using context sensitive design principles.[102]

And it is not just Smart Mobility's view that context sensitive designs should be thoroughly explored. As the Bergmann Review emphasizes, "a relatively small change in the design approach for proposed improvements can make a *huge* difference in right-of-way impacts."[103] After a detailed analysis of the documents and a site visit, Mr. Clark and Mr. Melweski -- the former directors of highway design for both the New York State Department of Transportation and the New York State Thruway Authority, respectively --confirm that:

> Smart Mobility makes a strong case that ***improvements could be made by TCA to the AIP alternative that have solid potential to greatly reduce the displacement of people and businesses while at the same time preserving its operational benefits***. Their concepts for the various improvements are enhanced by the fact that they build off of traffic information, constraints, and opportunities already presented by TCA in the SEIR and related documents.[104]

They further state:

> Smart Mobility's proposals reflect innovative concepts and context sensitive treatments that are endorsed and encouraged by the Federal Highway Administration (FHWA), the American Association of State Highway and Transportation Officials (AASHTO), the Institute of Transportation Engineers (ITE), and others. The proposals do so while at the same time addressing the overall objective for the project.[105]

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[101] See Bergmann Associates, Inc., *Peer Review of Smart Mobility's Report entitled: "An Alternative to the Proposed Foothill South Toll Road, The Refined AIP Alternative – Design Modifications to Reduce Displacements" – revised January, 2008*, dated January 23, 2008 ("Bergmann Review").
[102] *Revised Smart Mobility 2008 Study* at iii.
[103] Bergman Review at 7 (emphasis added).
[104] *Id.* at 3.
[105] *Id.*

A theme frequently repeated by both TCA and Caltrans is that the AIP-R report does not include "engineering" level designs. This is true, but irrelevant. As discussed in our prior letter, such designs at this stage would be premature. Indeed ***neither TCA nor Caltrans has produced any engineering-level designs for the AIP.*** It is through the iterative engineering design process – a process TCA has not attempted here – that specific design challenges can be overcome.

Indeed, Caltrans regularly overcomes daunting challenges throughout the state as it increases capacity on existing roads in heavily developed areas. Recently, for example, Caltrans and the Federal Highway Administration approved a project *widening the I-5 by two lanes in each direction* between Route 91 in Los Angeles County and the I-605 in Orange County.[106] This is an area that, like the I-5 in southern Orange County, is already heavily developed, with homes and businesses directly adjacent to the existing alignment. Nonetheless, Caltrans managed to squeeze the extra lanes and redesigned interchanges into the available space with a small fraction of the takings TCA claims would be necessary here. ***It did this by using some of the same design concepts proposed by Smart Mobility—and claimed to be "infeasible" —here***. For example:

- The existing centerline will be shifted where appropriate to avoid right-of-way impacts by limiting right of way acquisition to one side of the freeway.[107]

- Standard tight diamond interchanges are employed to reduce right-of-way impacts, instead of the destructive partial cloverleaf interchanges that TCA claims are necessary.[108]

- Retaining walls in lieu of embankments are employed to avoid displacements.[109]

Nor is Caltrans precluded from approving interchange designs that do not meet all of its design standards. Caltrans has a procedure for approving non-standard-yet-safe features (Highway Design Manual, Index 82.2). Indeed, Caltrans recently approved a number of alternative designs for the I-5 and Ortega Highway Interchange Project that *do not meet its minimum distance requirements between ramps and local road intersections*.[110] This is the *same* inconsistency in the *same* intersection that Caltrans identified in critiquing the AIP-R.[111] Like this and other non-standard features approved by Caltrans, the AIP-R designs would be an *improvement* over the existing substandard and deteriorating facilities, even if some standards for new roads were not met.

The obvious question is this: if highway improvements can be accomplished in heavily developed urban environments elsewhere in California and throughout the United States, why not along the stretch of I-5 in southern Orange County? Neither TCA nor Caltrans have identified anything unique about this part of the state. Nor did the highway design experts from

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[106] See *Final EIR-EIS Interstate 5 Corridor Improvement Project–Santa Ana Freeway From SR 91 to I-605.* http://www.dot.ca.gov/dist07/resources/envdocs/docs/I-5_CIP_Final_EIR-EIS_VI.pdf

[107] *Id.* at 5 (Discussing adopted Alternative 4B–Value Analysis Alignment).

[108] *Id.* at 24, 28, 30.

[109] *Id.* at 3 (Alternatives 4 and 5).

[110] *See* http://www.sanjuancapistrano.org/Index.aspx?page=398 (last visited January 16, 2008); *see also* Lucinda Wilson, Smart Mobility, Letter to Mark Delaplaine dated Jan. 16, 2008 at 3.

[111] Cindy Quon, Caltrans, letter to Tay Dam, FHWA, dated January 2, 2008, Attachment A at 2 (d.iv.).

Bergmann Associates who reviewed the site and the Smart Mobility report. To the contrary, potentially feasible means to build it have been identified. The fact is that I-5 and arterial expansions can be done, if local authorities and Caltrans *want* to do it.

Improvements to the I-5 Will Be Needed Even if the Toll Road Is Built. TCA not only inflated costs by grossly overestimating the number of displacements, but it also wrongly attributed to the AIP extensive operational and safety improvements to the I-5 that are necessary even if the Tollroad is built. These include major redesign of a number of interchanges built in the 1960s whose designs have been rendered obsolete and which can no longer handle traffic volumes. The cost to make these improvements is just as much a cost of the Toll Road as it is the AIP or other alternatives. As explained in the Bergmann Review:

> If the Tollroad is constructed, it is likely many of the operational and safety problems that the AIP alternative would have resolved along I-5 and at arterial intersections would remain. Some, if not all of these problems would still need to be addressed. The construction cost, right-of way costs and impacts for this work are elements of the overall true cost and impact of the toll road alternatives. Only when these are included in the analysis can a truly representative comparison be made between toll road alternatives and the revised AIP alternative.[112]

Indeed, as we explained in our previous comment letter, many of the improvements contemplated by the AIP Alternative have already been programmed into the Regional Transportation Plan and the County's Long Range Transportation Plan. After factoring out the costs of these necessary upgrades, the true costs and impacts of constructing the AIP alternative is far less than estimated by TCA. Moreover, the very fact that these improvements are already planned belies TCA's claim that they are infeasible because of their claimed right-of-way impacts.

There can be no doubt that, from the outset, TCA's approach to the AIP Alternative has been result-driven, and that failure is the desired result. How else could TCA have determined that any and every design modification that reduces displacements is "infeasible," while at the same time concluding that running a new toll road through 16 miles of natural open space, including 4 miles of state park land, is perfectly "feasible?" If the I-5 can be feasibly widened in northern Orange County, it can be feasibly widened in southern Orange County. This is confirmed by AIP-R study. In light of the AIP-R and other alternatives that would reduce or eliminate impacts to the coastal zone, there is no basis under the Coastal Act for permitting the proposed Toll Road.

VII. Conflict Resolution

It is undisputed that the project is inconsistent with numerous provisions of the Coastal Act. TCA therefore relies on the conflict resolution provision of section 300007.5 of the Act. As discussed in our prior letter, however, there is no "conflict" in this case to begin with. ***All of the supposed "benefits" of the project – and more – could be obtained independent of the Toll Road, or through less destructive alternatives to the Toll Road.***

[112] Bergmann review, at 7-8.

Moreover, even if there were a conflict, the Toll Road cannot by any stretch of the imagination be considered the option "most protective of coastal resources." This Project would have impacts that, taken together, are orders of magnitude beyond projects considered by the Commission, and its benefits are at most incidental. Any of the feasible alternatives identified in the Staff Report – or not building the Project at all – would be by far more protective of coastal resources.

Geologic, Flood and Fire Hazard Risk. TCA asserts that the Commission should find denial of the Project would create a conflict with the policy of section 30253(1) requiring new development to "minimize risks to life and property in areas of high geologic, flood and fire hazard." The Commission has *never* found a conflict based on this policy, and for good reason. As discussed in our prior letter, the policy is clearly aimed at ensuring that new development that is otherwise consistent with the Act does not exacerbate safety risks if located in a high hazard areas. It is not intended to allow new development, by purporting to mitigate existing risks created by others, to trump the Act's resource protection policies. Nor would the policy under such interpretation provide any benefits to "coastal resources" to be balanced under section 30007.5.

But more to the point, even if TCA's interpretation of the policy were accepted, denial of the Toll Road would in no way conflict with it. The feasible, less damaging alternatives identified in the Staff Report would all improve traffic and circulation, thereby improving emergency access. The AIP-R in particular would improve the most important evacuation route in southern Orange County – I-5 – and calls for arterial improvements that would provide a new alternative north-south route. Improving evacuation routes – to the extent it is needed at all – is in no way dependent on the Toll Road.

Far from providing a safety benefit, the Toll Road would actually *increase fire risk* by creating a major new source of ignitions in fire-prone wildlands. TCA claims that the Toll Road would not substantially increase the risk of wildfire due an ability to move firefighting equipment along the road and its service as firebreak, and various mitigation measures. In reality, new highways in brush areas do far more harm than good with respect to wildfires.

Roads are a major source of fire ignitions, due sparks from catalytic converters, accidents, equipment malfunctions, discarded cigarettes, and other factors. According to *one of the world's leading fire ecologists*, Dr. Jon E. Keeley of the US Geological Survey and UCLA:

> In southern California several studies have shown that *fires are overwhelmingly tied to roads*. In many parts of the region a map of where fires ignite is often nearly a carbon copy of a road map . . . It is a well established fact that when new roads are established they bring with them a greatly increased incidence of fires.[113]

Data supplied to the Commission showing fire starts in the Cleveland National Forest in San Diego County – an area with scrub vegetation analogous to that surrounding the toll road – demonstrates ignitions heavily clustered along the route of Interstate 8.[114]

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[113] J.E. Keeley, *Letter to California Coastal Commission*, January 22, 2008 (emphasis added).
[114] USFS, Fire Starts, 1970-Present (2007), Map of fire starts in the Cleveland National Forest, Descanso Ranger District.

Moreover, a highway will generally act as a firebreak only in moderate weather conditions; "under the weather conditions that lead to our most destructive fires, *roads and even major highways seldom act as a barrier to fire spread*."[115] Indeed, the example cited by TCA of the 241 acting as a fire break during the 2007 Santiago fire is belied by the fact that the fire jumped the 241 several times during that event.[116]

The overwhelming historic fact is of greatly increased fire incidence due to roads like the Toll Road.[117] Various mitigation measures –fencing, signage in construction sites, fuel modification, call boxes – are in standard use elsewhere and yet roads remain a major source of wildfire ignitions.[118] Building new roads through wildlands is simply not a fire prevention strategy. The way to stop fires is to not start them in the first place. The Toll Road will have the opposite effect. In the words of a trained wildland firefighter, "while firefighting resources can certainly use the toll road, the increased fire risk the road brings to the landscape is not an acceptable trade off."[119]

***Water Quality*.** TCA continues to assert that the Project will further the Coastal Act's water quality policies because it will include new treatment controls for a segment of I-5 that currently discharges untreated runoff, offsetting the new pollutants added by the Toll Road. As discussed in our prior letter, offering to provide pollution reduction in a waterbody that is not impaired or threatened with impairment (other than by the Project itself) cannot provide the basis for a "conflict" under the balancing provision.

More importantly, to say building the Toll Road will improve water quality in San Mateo Creek is to deny reality. TCA concedes that treatment measures are not entirely effective at removing pollutants. Based on recent Caltrans numbers, between 42 and 50% of the copper, 10 to 28% of the suspended sediment, and 13 to 28% of the lead washed from the proposed Toll Road would be discharged to San Mateo Creek *after* treatment.[120]

TCA provides calculations purporting to show that, despite the addition of these pollutants, building the I-5 retrofit would result in a net decrease in total pollutant loadings from roadway runoff. But these calculations assume unrealistic reduction efficiencies. According to a recent Caltrans BMP Pilot Study, sand filters are prone to clogging and are recommended only for small impervious watersheds such as park and ride lots.[121] TCA is proposing sand filters for watersheds of up to *65 acres*, far greater than recommended. And extended detention basins have lower and much more variable removal rates than sand filters – as low as 40% for total

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[115] J.E. Keeley, *Letter to California Coastal Commission*, January 22, 2008 (emphasis added)
[116] The OC Sheriff website, November 9, 2007, http://blog.ocsd.org/post/Santiago-Fire---Evacuating-James-A-Musick-correctional-facility.aspx; Orange County Fire Authority website, http://www.ocfa.org/pages/ocfa.asp?filename=canyonfiremap.asp (Santiago incident map).
[117] "New Maps Emphasize The Human Factor In Wildfire Management," *ScienceDaily*, University of Wisconsin-Madison (2006, December 28), http://www.sciencedaily.com/releases/2006/11/061116081859.htm.
[118] "TCA's argument that the toll road would provide access to firefighters, might act as a fire break, and would include mitigation measures such as warning signs and call boxes, does not mitigate the increased fire risk the road would cause," R. Halsey, *Letter to California Coastal Commission*, January 22, 2008 at 2.
[119] *Id.*
[120] PWA, Letter of Jan. 22, 2008 at 9-10.
[121] California Department of Transportation, *Caltrans BMP Retrofit Pilot Program*, 2004.

suspended solids. Using realistic assumptions, the discharges from the Toll Road surface alone would likely be greater than any reductions achieved by the I-5 retrofit.

More fundamentally, TCA's analysis misses the critical point. The Toll Road would be discharging toxic roadway pollutants into *over 6 miles of upstream segments of the Creek that are presently pollution free*. Degrading the quality of this significant stretch of the Creek will not be offset by any pollutant reductions achieved by the retrofit, which affects only the final downstream segment of the creek.[122]

In addition, TCA's calculations account only for *onsite* discharges. As discussed earlier, increases in sedimentation caused by the project's massive cut and fill slopes present a major water quality issue that is not addressed at all by the I-5 retrofit.

Finally, as we explained in our previous letter, retrofitting I-5 is a project that is not at all dependent on the Toll Road. TCA suggests in its Response that, because no work on this segment of I-5 is currently programmed, the Toll Road is the exclusive vehicle for the treatment facilities. This is simply false. Any one of the alternatives to the project could include the proposed facilities. Indeed, the AIP-R alternative would provide new treatment for *15 miles* of I-5 that is presently untreated – 7 times the area TCA proposes – within watersheds that are actually degraded, and all without disturbing 6 miles of the San Mateo watershed. That is a real water quality benefit.

TCA's offer to mitigate I-5 runoff as a way to invoke the conflict resolution provision is a classic example of the "carrot" approach that the Commission has expressly rejected. As the Commission stated in its findings in the Tilch permit (one of those listed by TCA in support of its project):

> [T]he project proponent cannot 'create a conflict' by adding on an essentially independent component that does (not) remedy ongoing resource degradation or enhance some resource. The benefits of a project must be inherent in the essential nature of the project. If the rule were to be otherwise, project proponents could regularly 'create conflicts' and then demand balancing of harms and benefits simply by offering unrelated 'carrots' in association with otherwise unapprovable projects. The balancing provisions of the Coastal Act could not have been intended to foster such an artificial and manipulatable process.

The Toll Road would degrade a water body that is currently clean and is not needed to provide any water quality benefits. The Project violates the Coastal Act's water quality policies and certainly may not rely upon those policies to create a "conflict."

Public Access. TCA claims the Project will increase access to the coast by alleviating traffic congestion for State Beach users. In our prior letter, we detailed how TCA's traffic data did not indicate a congestion problem on I-5 for most drivers heading to the park, even during peak hours, or include any data at all on weekend usage. TCA's Response does not supply any further traffic data. Instead, it quotes a humor piece by a surfer recalling time spent in his car. This is not the kind of "evidence" that can support a finding of conflict.

[122] *Id.* at 10.

Even if TCA had demonstrated a congestion problem for Park users, the Toll Road's impact on public access to San Onofre is overwhelmingly negative. No amount of congestion relief could make up for the loss of campground access for 100,000 annual users. Nor can TCA rely on its $100 million offer, which as previously discussed identifies no new recreational opportunities and is yet another example of a "carrot" that may not be used to invoke balancing. Destroying a park to improve access to it, or obtain money for it, lacks common sense and is not a legitimate trade off under the Act.

TCA relies on two prior decisions in which the Commission balanced public access policies against other policies in the Act, both of which are easily distinguishable. The North County Transit District case and the San Joaquin Hills Toll Road case involved impacts to much smaller area of natural habitat communities (2.96 acres and 10 acres respectively) than the Foothill-South, and did not impact coastal recreation resources or archeological resources. In addition, the NCTD case, unlike the Foothill South, promoted the Act's policies related to providing transit service. And in the SJHTC case, the alternative would have required widening of the Pacific Coast Highway, which the Commission found would impact coastal resources. In contrast, the alternatives here – particularly widening the I-5– would *avoid* impacts to coastal resources, the exact opposite of the SJHTC case.

In short, there are no coastal benefits of the Toll Road that the AIP-R alternative cannot also provide, but with a drastic reduction in coastal impacts. There is no conflict here to balance, and even if there were, the negative impacts of the Toll Road project far outweigh the asserted benefits. The project must be denied.

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President
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Susan Jordan
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Dan Silver, MD
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Elisabeth M. Brown, Ph.D.
President
Laguna Greenbelt, Inc.

Glenn Olson
Executive Director
Audubon California

cc: California Coastal Commission Staff

EXHIBIT 4
Application No.
CC-018-07
2nd Addendum

improvements that are currently funded and/or committed, and another assuming full buildout of the MPAH and RTP. Committed improvements include those that are in a capital improvement program of the County of Orange or the local jurisdictions within the study area, or projects that are currently funded by Caltrans. Also included in the committed highway network are improvements that will be built within the time period prior to the year 2025 by a specific funding source, for example the City of San Juan Capistrano's Reimbursement Agreement and Nexus Fee Program and the City of San Clemente's Regional Circulation Financing and Phasing Program (RCFPP). In addition, improvements that are part of conditions of approval for development that has been approved and is included in the long-range demographic data forecasts (i.e., OCP-2000 projections) are also assumed to be committed.

Regarding circulation system assumptions for the undeveloped RMV areas, although a specific roadway access plan has not formally been prepared for the 21,000 DU plan that is assumed in OCP-2000, through consultation with the OCTA and the County of Orange, those agencies have recommended the use of a general roadway plan that provides access between the RMV development areas and the surrounding MPAH arterial network. The access plan does not assume any changes to the current MPAH. This type of general access plan was also applied in the analysis of the scenario based on the existing General Plan zoning designations for RMV (i.e., 6,250 DU development plan). Through correspondence between the County of Orange and the OCTA, the County of Orange provided an access plan to apply in the analysis of the 14,000 DU proposed RMV plan. The access plan includes proposed changes to the MPAH. For the scenario in which no future RMV development is assumed, no additional roadway improvements beyond those that are currently included in the MPAH were assumed in the RMV area.

1.4.5 INITIAL AND ULTIMATE CORRIDOR ALTERNATIVES

For those SOCTIIP Alternatives that assume construction of the FTC-S corridor, each corridor alternative is proposed as an initial corridor alternative and an ultimate corridor alternative. The initial corridor alternatives are designed to serve traffic demand through year 2025, whereas the ultimate corridor alternatives are not anticipated to be needed until after 2025. The initial corridor alternatives assume that fewer travel lanes are provided on the FTC-S compared to the number of lanes for the ultimate corridor alternatives.

When modeling traffic forecasts for the corridor alternatives under year 2025 conditions with the FTC-S in operation as a toll road, the configuration of the FTC-S under the ultimate corridor alternative was assumed in order to determine the maximum traffic demand on the FTC-S. The resulting year 2025 traffic volumes on the FTC-S under tolled conditions can be accommodated by the corridor configuration in either the initial or ultimate corridor alternatives. This is an indication that the traffic volumes on the FTC-S would be approximately the same if the corridor were to be modeled based on the initial corridor alternative because the forecasted traffic volumes are not constrained by the capacity of the FTC-S. It was, therefore, not necessary to conduct separate year 2025 traffic analyses for the initial and ultimate corridor alternatives. However, to demonstrate worst case conditions, the capacity analysis summarized in this report for the corridor alternatives under year 2025 toll conditions is based on the initial corridor alternatives.

1.4.6 TOLL VERSUS TOLL-FREE CONDITIONS

Special scenarios that assume toll-free operation of the transportation corridors were also studied. Because the traffic demand on the FTC-S under 2025 toll-free conditions was found to exceed the capacity provided under the initial corridor alternatives, the FTC-S between Oso Parkway and I-5 was assumed to be built out to the configuration under the ultimate corridor alternatives in the toll-free scenarios.

1.5 PERFORMANCE CRITERIA AND STANDARDS

This Section discusses the performance criteria applied in the SOCTIIP traffic and circulation analysis. The performance criteria discussed here have a number of roles in the overall traffic and circulation analysis. While their primary function is to define impacts for the EIS/SEIR, there are some related aspects which affect how traffic forecast data is prepared and evaluated. In particular, the evaluation of traffic forecast data for the various SOCTIIP Alternatives involves deriving measures of effectiveness in addition to the basic impact measures. Accordingly, performance criteria are discussed here under two general headings, impact criteria and measures of effectiveness.

1.5.1 IMPACT CRITERIA

In most traffic technical studies, impact criteria are based on two primary measures. The first is "capacity" which establishes the vehicle carrying ability of a road segment and the second is "volume." The volume measure is either a traffic count (in the case of existing volumes) or a traffic forecast for a future point in time. The ratio between the volume and the capacity gives a volume/capacity (V/C) ratio and based on that V/C ratio, a corresponding LOS is defined. Traffic LOSs are designated A through F with LOS A representing free flow conditions and LOS F representing severe traffic congestion. Traffic flow quality for the different LOSs are described in detail in Table 1-1.

Table 1-2 summarizes the V/C ranges that correspond to LOSs A through F for arterial roads and freeway segments. The V/C ranges listed for arterial roads are designated in the Orange County CMP and are also utilized by the County of Orange and by the local jurisdictions in the SOCTIIP study area. The V/C ranges listed for freeway segments are based on the V/C and LOS relationships specified in the *Highway Capacity Manual 2000 (HCM 2000)* (Transportation Research Board, National Research Council, 2000 Edition) for basic freeway sections with free-flow speeds of 105 kilometers per hour (65 miles per hour).

Both the V/C ratio and the LOS are used in identifying impacts. Certain LOS values are deemed acceptable by the various governing jurisdictions within the traffic analysis study area and increases in the V/C ratio which cause or contribute to the LOS being unacceptable are defined as an adverse impact.

This V/C approach is typical throughout the industry. However, in establishing V/C based performance criteria, there are certain issues which need to be addressed to obtain suitable V/C estimates and relate them to LOS. For instance, while ADT is a useful measure to show general

MEMORANDUM

To: James Birkelund, NRDC
From: Norman L. Marshall
Date: 29 January 2008
Re: Capacity Analysis for the Proposed Foothill South Toll Road

We have reviewed the information available in the SEIR and accompanying reports regarding the capacity analysis of the Foothill South Toll Road. The following paragraphs, found on page 1-12 of the Traffic and Circulation Technical Report, by Austin Faust, 2003, describes the modeling procedure in relation to the "initial" and "ultimate" lane configurations.

> 1.4.5 INITIAL AND ULTIMATE CORRIDOR ALTERNATIVES
> For those SOCTIIP Alternatives that assume construction of the FTC-S corridor, each corridor alternative is proposed as an initial corridor alternative and an ultimate corridor alternative. The initial corridor alternatives are designed to serve traffic demand through year 2025, whereas the ultimate corridor alternatives are not anticipated to be needed until after 2025. The initial corridor alternatives assume that fewer travel lanes are provided on the FTC-S compared to the number of lanes for the ultimate corridor alternatives.
>
> When modeling traffic forecasts for the corridor alternatives under year 2025 conditions with the FTC-S in operation as a toll road, the configuration of the FTC-S under the ultimate corridor alternative was assumed in order to determine the maximum traffic demand on the FTC-S. The resulting year 2025 traffic volumes on the FTC-S under tolled conditions can be accommodated by the corridor configuration in either the initial or ultimate corridor alternatives. This is an indication that the traffic volumes on the FTC-S would be approximately the same if the corridor were to be modeled based on the initial corridor alternative because the forecasted traffic volumes are not constrained by the capacity of the FTC-S. It was, therefore, not necessary to conduct separate year 2025 traffic analyses for the initial and ultimate corridor alternatives. However, to demonstrate worst case conditions, the capacity analysis summarized in this report for the corridor alternatives under year 2025 toll conditions is based on the initial corridor alternatives.

At the time this modeling was conducted, the "initial" configuration was 6 lanes (3 lanes in each direction), and the "ultimate" was 8 lanes. Now, the proposed configurations are different, with the "initial" being only 4 lanes (2 in each direction), and the ultimate being 6 lanes total. However, the modeling was never updated to reflect the new proposed configurations, creating several important issues, which are discussed below.

1) **The Toll Road will fail if it is only four lanes**- The TCTR Appendix D shows the results of capacity analyses for the proposed toll road. Table D-32, on pages D-92 through D-94 specifically show the results for the preferred alternative for the committed circulation system and proposed RMV plan. This analysis was conducted for a six-lane configuration (2 general purpose lanes and 1 HOV lanes in each direction) for the morning and afternoon peak hours. If this were updated to reflect the narrower corridor that is now proposed by TCA, several of the new segments of the SR 241 toll road would literally be over capacity, with Level of Service "F", in both the morning and

afternoon peak hours. The projected traffic volumes would exceed the total capacity of the highway lanes.

2) **The benefits of the toll road would not be as great as TCA claims**- The toll road will carry less peak hour traffic than it has projected, because drivers will not pay to drive on a highly congested road. This will result in less relief of congestion on the I-5 and other arterials than projected by TCA. The Orange County Transportation Authority maintains a policy of keeping volumes on the SR 91 toll lanes at no more than 1,600 per lane per hour. When volumes approach this level, the tolls rise to discourage overuse of the toll lanes, and to keep them flowing freely. The TCA's analyses use 2,000 cars per hour per lane as the capacity of a freeway or tollway lane. The TCA volumes for the new segments of the toll road peak at 4,780 vehicles per hour (southbound PM peak hour), which would exceed the total capacity of the two lanes that are provided (4,000 vehicles per hour). The congestion that will result on the narrower toll road will divert traffic back onto I-5 and the other arterials. However, the preferred alternative does not include any improvements on these other corridors.

3) **The modeling and capacity analysis should be updated to reflect the new proposal**-The TCA's configuration of the toll road has changed significantly since the modeling and capacity analysis was conducted. These changes will significantly alter the utility of the toll road to through travelers, as well as the operating conditions on the toll road, invalidating the older modeling. Toll roads are particularly vulnerable to diversions from congestion, as most drivers will not be willing to pay a premium if the route will be congested, as shown by the experience of SR 91 tolling.

4) **The air quality, greenhouse gas, and energy analyses also should be redone**-All of these analyses are based on the traffic analyses and the results would be different with different traffic numbers.

In conclusion, we find that the modeling conducted by the TCA by Austin Faust in 2003 and before is no longer relevant due to the change in proposed lane configuration of the toll road. The narrower toll road would be congested to the degree that it will no longer be an attractive alternative to arterials and the I-5, and therefore it will not provide the traffic relief claimed by TCA.

Shirley Dettloff
6812 Laurelhurst Dr.
Huntington Beach, California

The Honorable Patrick Kruer, Chairman
And Members
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105-2219

Dear Chairman Kruer and Commissioners,

I am writing to you to express my opposition to the proposed toll road which will impact San Onofre State Beach. This should be a very easy decision for the commission, as the Coastal Act requires that you protect important recreational areas in our state, as well as sensitive habitat. Your staff has presented very strong evidence that the toll road will have severe and unacceptable impacts to the state park, no matter what the mitigation measures are. The Coastal Act also prohibits any project that will impact environmentally sensitive habitats. The Foothill Toll Road will damage ESHA's with impacts to 50 acres of coastal sage scrub.

As a former Mayor of the City of Huntington Beach and a former member of the State Coastal Commission, I understand how difficult it is when you are trying to make a fair decision. We all acknowledge the demand for solving transportation problems in Orange County, but this is not the correct solution. If you were to support this road, you will set a precedent that will haunt all future decisions you are required to make. It is the responsibility of the leaders in Orange County, who allowed uncontrolled growth, to solve this enormous transportation problem, but not at the expense of the environment.

As you make your decision, please remember that you were appointed to follow the Coastal Act. This should make your decision making process much easier. Please follow the advice of the Department of Parks and Recreation and their Commission and your own staff. They have done extensive research and have come to conclusions based on scientific evidence and not financial considerations.

Please support your staff and oppose the Foothill South Toll Road.

Sincerely,

Shirley Dettloff

EXHIBIT NO. 5
APPLICATION NO.
CC-018-07
2nd ADDENDUM